ASSEMBLÉE NATIONALE

THE NATIONAL ASSEMBLY IN THE FRENCH INSTITUTIONS

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SERVICE DES AFFAIRES INTERNATIONALES ET DE DÉFENSE

NOTE

These files answer questions often asked to the departments of the French National Assembly.

All the departments of the National Assembly have played a part in their writing and have been guided by two main principles:

- The files represent summaries of each subject;
- The files are practical, in order to be easily used by the readers.

Therefore this collection is not a textbook of constitutional or parliamentary law. Each file deals with a different topic autonomously and thus there may be some overlapping between files.

This document is regularly updated and supplemented.

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File n°1

General Presentation of French Political Institutions

Key Points

The Constitution of October 4, 1958 was designed in order to curb the excesses of the assembly system at a time characterized by the inability of the Fourth Republic to deal with the crises created by decolonization.

At the centre lies the President of the Republic who is the real institutional 'keystone'. By his arbitration, he ensures "the proper functioning of the public authorities". His powers have been gradually strengthened.

The Prime Minister directs the actions of the Government, which shall "determine and conduct the policy of the Nation".

Parliament is made up of two assemblies, the National Assembly and the Senate, which examine and pass laws, monitor Government and assess public policies. The National Assembly, which is elected by direct universal suffrage, plays a predominant role in the legislative procedure, since it has the final decision in the case of disagreement with the Senate and it may, in addition, vote the Government out of office.

The constitutional revision of July 23, 2008 strengthened the powers of Parliament.

☞ *See also files 2, 3, 4, 6, 30, 31, 32, 39, 43 and 45*

I. – THE CONSTITUTION OF THE FIFTH REPUBLIC

1. – THE FIFTH REPUBLIC – A REACTION TO THE DIFFICULTIES ENCOUNTERED BY THE FOURTH REPUBLIC

The final years of the Fourth Republic were characterized by the paralysis of the system and by its inability to confront the major challenge posed by decolonization.

Faced with an uprising in Algeria, which was demanding its independence, and the threat of an insurrectional coup d'état by French military leaders based in Algiers (May 13, 1958), René Coty, the President of the Republic, called upon General de Gaulle, who, at that stage, had withdrawn from political life, to form a new Government.

The Government took office on June 1, 1958. On the basis of the Constitutional Act of June 3, it established a Consultative Constitutional

Committee which, during the summer of 1958, examined the draft Constitution drawn up by the Minister of Justice, Michel Debré.

The draft, which was voted on by referendum and was passed on September 28 by 79% of the votes cast, was promulgated on October 4, 1958.

2. – REVISIONS TO THE CONSTITUTION SINCE 1958

Article 89 of the Constitution lays down the mechanisms for its revision. Bills concerning constitutional revision, be they Government bills submitted by the President of the Republic upon a proposal of the Prime Minister or bills originating in Parliament, must first be passed by the two assemblies on separate occasions but in identical terms. The usual prerogative of the National Assembly to have the "final say" in the case of a disagreement with the Senate does not apply to constitutional bills, which may, by decision of the President of the Republic, be submitted to the two assemblies convened in "Congress" (the bill is passed if accepted by three fifths of the votes cast) or put to a referendum if it was originally Government-sponsored.

So far, the Constitution has been modified on twenty-two occasions following this procedure, each time by way of a Government-sponsored bill.

Some of these revisions have significantly changed the general working of the system and its institutions, including in the following cases:

- The extension of the right of referral to the Constitutional Council to sixty M.P.s or sixty Senators (1974);
- The introduction of a single parliamentary session (1995);
- The shortening of the Presidential term from seven to five years (2000);
- The strengthening of Parliament's prerogatives (2008).

Other constitutional amendments, although not fundamentally changing the nature of the system, have represented important steps in the promotion of gender equality (1999) or in the enshrinement in the Constitution of the abolition of the death penalty (2007).

Other modifications were of a more "technical" nature, such as, for instance, those changing the dates of parliamentary sessions (1963), creating the Court of Justice of the Republic (1993) or changing the legal status of the Head of State regarding criminal law. Numerous revisions have stemmed from the ongoing integration of France within the European Union (June 1992, January 1999, March 2003, March 2005 and February 2008).

However, the reform concerning the election of the President of the Republic by direct universal suffrage (1962) was not carried out by means of article 89 but directly by referendum, in application of article 11 of the Constitution.

II. – GENERAL CARACTERISTICS OF THE INSTITUTIONS OF THE FIFTH REPUBLIC

1. – A MIXED SYSTEM?

The institutions of the Fifth Republic borrow classic elements from both the parliamentary and the presidential systems. This has led some constitutional experts to classify the Fifth Republic as a "semi-presidential" system.

The parliamentary nature of the system is made clear by the existence of a Government led by a Prime Minister who is accountable for his actions before an assembly elected by direct universal suffrage. To counterbalance this accountability, the Prime Minister may call upon the Head of State to dissolve the National Assembly.

On the other hand, the election of the President of the Republic by direct, universal suffrage, his major role in foreign policy but also his pre-eminence in the conduct of national policy, outside of periods of cohabitation, have no equivalent in such parliamentary systems as that of the United Kingdom or the Federal Republic of Germany where the role of the Head of State is more a matter of protocol. These elements in fact make the French system closer to the American model.

Besides, a number of factors have led to an increase in the powers of the Head of State: the reduction of the presidential term to five years, the fact that presidential elections now precede general elections, the new possibility for the President of the Republic to speak before both assemblies convened in Congress, along with new institutional practices.

2. – THE CONSTITUTION – SUPREME LAW

For a long time, the French legal tradition, deeply influenced by the writings of Jean-Jacques Rousseau (*The Social Contract*, 1762), granted absolute primacy to the law, passed by the representatives of the people and being the "expression of the general will" according to the terms of Article 6 of the 1789 Declaration of the Right of Man and Citizen.

Nonetheless, pursuant to the Constitution of the Fifth Republic, the Constitutional Council, a collegial body made up of nine members appointed by the President of the Republic and the presidents of the two assemblies is responsible for checking the conformity of the law with the Constitution before its promulgation. In the following years, the role of the Council was gradually strengthened. From the early 1970s, the Council broadened its monitoring capacity by including in its "constitutionality base" (i.e. the laws and texts to be used as reference for constitutional monitoring), the Declaration of 1789, the Preamble to the Constitution of 1946 and the fundamental principles identified by the laws of the Republic. In 1974, the ability to refer was broadened to sixty Members of the National Assembly and to sixty Senators.

In 1985, the Council declared that the law "only expresses the general will insofar as the Constitution is respected" (decision no. 85-197 DC of August 23, 1985). The lawmaker must act in compliance with all "principles with a constitutional value".

This development was strengthened by the constitutional revision of July 23, 2008 which recognized the possibility of referral to the Constitutional Council after promulgation of the law if, during trial proceedings before a court of law, it is claimed that a statutory provision which has already been enacted infringes the rights and freedoms guaranteed by the Constitution (Priority Preliminary Ruling on the Issue of Constitutionality).

III. – THE EXECUTIVE

1. – THE PRESIDENT OF THE REPUBLIC – KEYSTONE OF THE INSTITUTIONS

The Constitution of the Fifth Republic places the President of the Republic in the highest position and makes him, in the words of Michel Debré, the "keystone" of the system. Article 5 of the Constitution provides that "the President of the Republic shall see that the Constitution is observed. By his arbitration, he ensures the proper functioning of the public authorities and continuity of the State. He is the guarantor of national independence, territorial integrity and observance of treaties".

Since the constitutional revision of October 2, 2000, the President of the Republic is elected by direct universal suffrage for five years, as opposed to seven previously.

He is provided with individual powers which require no counter-signature. These powers place him at the very heart of French political and institutional life:

- He appoints the Prime Minister and may terminate his period of office;
- He may decide to speak before both Houses of Parliament convened in Congress;
- He may submit to referendum certain bills dealing with the organization of public authorities, with reforms concerning national economic, social or environmental policy or with public services associated with such policies;
- He may, after consulting with the Prime Minister and the Presidents of the two assemblies, declare the National Assembly dissolved;
- When the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are under serious and immediate threat, and when the proper functioning of the constitutional public authorities is interrupted, he shall take the measures required by such circumstances;

– He may refer a law or a treaty to the Constitutional Council and appoints one third of its members. The power of appointment vested in the President of the Republic is exercised after public consultation with the relevant standing committee in each assembly. The appointment is rejected when the sum of the negative votes represents at least three fifths of the votes cast by each committee.

The President of the Republic is also provided with a number of shared powers. To use such powers he must obtain the counter-signature of the Prime Minister and, in some specific cases, of the minister concerned:

– Upon proposal of the Prime Minister, he appoints the other members of the Government;

– He presides over the Council of Ministers;

– He promulgates laws that have been fully adopted within fifteen days of their transmission to the Government and he may, before the expiry of this time limit, ask Parliament to reconsider the law or sections of the law;

– He signs the ordinances and decrees deliberated upon in the Council of Ministers and makes appointments to the civil and military posts of the State;

– He is the Commander-in-Chief of the armed forces;

– The constitutional reform of 1962, which introduced the election of the President of the Republic by universal suffrage, strengthened his legitimacy substantially. From being a simple “referee” above party politics, he has become the real leader of a governing majority when the majority in the National Assembly coincides with that which elected him. He determines the main direction of the policies to be pursued by the Government.

2. – THE GOVERNMENT

The Constitution provides the Government with many powers.

According to the letter of the Constitution, it is the responsibility of the Government to determine and to conduct the policy of the Nation. Thus the Government has the means to direct, speed up or slow down the discussion of bills during the legislative procedure before the assemblies. The leader of the Government heads the civil service and is responsible for national defence. He has the power to make regulations, i.e. to take either general measures not falling within the ambit of the law or, more often, measures which set down the exact mechanisms for the application of the law (implementation decrees).

The Prime Minister and the Government rely upon the majority which supports them in the National Assembly and, at times, in the Senate.

Each member of the Government takes on a double role, both political and administrative. From an administrative point of view, the minister is placed at the head of a group of units which make up his ministerial department and over which he has hierarchical control by means of ministerial orders and circulars. In this way, he has the power to organize his administration. This allows him to play a pivotal role between the Government's action and the administrative management in charge of implementing such action.

IV. – PARLIAMENT

1. – A BICAMERAL PARLIAMENT DOMINATED BY THE NATIONAL ASSEMBLY

The institutions of the Fifth Republic set up a Parliament consisting of two assemblies, the National Assembly and the Senate.

The National Assembly is made up of 577 M.P.s, elected for five years (except in the case of dissolution) by direct universal suffrage within constituencies. (Since the constitutional revision of July 23, 2008 this has become the maximum number and is set down in article 24 of the Constitution).

The Senate is made up of 348 Senators (the maximum number allowed by article 24 of the Constitution) elected for six years by indirect universal suffrage by a college of approximately one hundred and fifty thousand grand electors (95% of whom are delegates of municipal councils). As opposed to the National Assembly, which is wholly re-elected at each election, half the Senate is renewed every three years.

Thus, the institutions provide an unequal bicameralism which gives an advantage to the assembly elected by direct suffrage. Although the two assemblies have identical rights during the course of the legislative procedure, if a disagreement arises with the Senate, the Prime Minister may ask the National Assembly to have the final say. In addition, only the National Assembly can overturn the Government.

2. – RATIONALIZED PARLIAMENTARIANISM

In 1958, the new Constitution was intended to break with the assembly system, to bring an end to ministerial instability and to shield the Government from a growth in the prerogatives of Parliament to its detriment. It thus reduced such prerogatives.

This is why the rhythm of sessions was very strictly limited. Nonetheless, since the constitutional revision of August 4, 1995, there has been a single nine-month session in place of two sessions of eighty and ninety days.

The realm of matters for statute, i.e. laws passed by Parliament, was limited as follows:

- Only matters which are laid down by the Constitution (article 34 in particular), are considered matters for statute (laws). This disposition concomitantly broadens the scope of regulatory power. This measure represented a development which appeared very important in 1958 since, until then, laws could deal with all questions. In practice, however, the principal matters continue to fall within the ambit of statute;
- The Government has a series of means at its disposal to enforce the respect of this division between law and regulation. Thus it can declare inadmissible any amendment which encroaches on the ambit of statute (article 41) or may use the procedure of "delegalization" (turning an apparent matter for statute into a matter for regulation) of provisions which appear matters for statute but which are in fact matters for regulation (article 37, paragraph 2). These provisions are rarely used, however. To provide them with a little more force, the constitutional reform of July 23, 2008, gave the presidents of both assemblies the power, which until then had only been held by the Government, to declare inadmissible an amendment which did not fall within the ambit of the law;
- The Government may ask Parliament to provide it with the right to legislate by ordinance in very precise areas and for a limited period (article 38). The Constitutional Act of July 23, 2008 however stipulates an explicit ratification of such ordinances.

Financial inadmissibility was introduced by article 40 of the Constitution in the following terms: "*Bills and amendments introduced by Members of Parliament shall not be admissible where their enactment would result in either a diminution of public revenue or the creation or increase of any public expenditure*".

The Government has specific rights during the course of the legislative procedure, although these rights have been reduced by the Constitutional revision of July 23, 2008:

- The Government controls a part of the agenda of the two assemblies, (since March 1, 2009, the rule is that only two out of four weeks are reserved for the consideration of bills chosen by the Government, although finance bills and social security financing bills do have priority);
- The Government can speed up the examination procedure for a bill by calling for the holding of a joint committee (made up of seven M.P.s and seven Senators) after only one reading of the bill before each assembly as long as the Conferences of Presidents of the two assemblies do not jointly oppose such an action;
- The Government may request a forced vote on all or some of the provisions being discussed before the National Assembly;

– The Government may make its accountability on a finance bill or a social security financing bill an issue of confidence; since March 1, 2009, the Government may make its accountability on any other Government or Member's bill an issue of confidence only once per session. This procedure allows the bill to pass without vote if no motion of censure is adopted.

In addition, the incompatibility between holding ministerial and parliamentary office results in creating a clear separation between ministers and M.P.s and Senators. This is totally different from the previous systems where executive office was systematically held by parliamentarians, and ministers had a right to vote in the assembly to which they were elected. The new version of the second paragraph of article 25 of the Constitution which was introduced in July 2008, provides however that an Institutional Act (in this case, Act no.2009-38 of January 13, 2009) will set down the conditions in which M.P.s or Senators who accept ministerial positions will be only temporarily replaced by their substitute until they no longer hold such positions.

Thus, when compared to the previous system, the institutions of the Fifth Republic are characterized by the strengthening of the power of the executive and the limitation of parliamentary activity.

The stability of the executive meant that various crises, both external (decolonization) and internal (May 1968) could be overcome without the continuity of the state being undermined. The Fifth Republic thus became, along with the Third Republic, one of the most stable systems in French constitutional history.

Given that this stability, thanks to the permanence of the *fait majoritaire*, or "majority phenomenon" (the fact that President and Parliament are of the same political family), can be considered as an established fact, it was considered possible in 2008, without calling it into question, to limit the means made available for the supremacy of the executive power and to strengthen the prerogatives of Parliament.

File n°2

The President of the Republic

Key Points

The President of the Republic is elected for five years by direct, universal suffrage and is the keystone of the institutions of the Fifth Republic. This method of election provides him with legitimacy in keeping with the breadth of his powers.

These powers are either personal (the recourse to a legislative referendum provided for by article 11 of the Constitution, the right to dissolve the National Assembly, the emergency powers of article 16, the appointment of the Prime Minister, the right of referral to the Constitutional Council etc.) or submitted to the counter-signature of the Prime Minister (the appointment of ministers, the convening of Parliament in extraordinary session, the signature of ordinances, the promulgation of laws, the right to grant pardon etc.).

More generally, it is the responsibility of the President of the Republic to enforce respect of the Constitution, to ensure the proper functioning of the public authorities and to guarantee national independence and territorial integrity. He is the guarantor of the independence of the judicial authority.

The actual powers of the President of the Republic can change in certain circumstances: when the presidential and the parliamentary majority coincide, the office of the President has primacy; on the contrary, a period of "cohabitation" provides actual political supremacy to the Prime Minister.

The reality of institutional practice and some reforms which have been implemented in recent times have strengthened the position of the President of the Republic. At the same time, the Constitutional Act of July 23, 2008 has increased the powers of Parliament.

☞ *See also files 1, 3, 5 and 6*

I. – THE STATUS OF THE PRESIDENT OF THE REPUBLIC

1. – THE ELECTION OF THE PRESIDENT OF THE REPUBLIC

The President of the Republic is elected for five years by direct, universal suffrage. This rule, which is provided for in the first paragraph of article 6 of the Constitution, is the result of two essential institutional reforms:

– The 1962 revision of the Constitution, carried out by referendum according to article 11: by introducing the election of the President of the Republic by universal, direct suffrage, it provided the office of President with a

legitimacy in keeping with the breadth of its powers (prior to this reform, the President was elected by a college made up of parliamentarians and locally elected representatives);

– The 2000 revision of the Constitution carried out through Parliament according to article 89 but approved by referendum, reduced the presidential term from seven to five years. This reform brought an end to the French Republican tradition of seven-year terms by opting for a solution close to the average length of presidential terms in other countries.

The election takes place between twenty and thirty-five days before the expiry of the term of the President of the Republic in office. The end of the term is brought forward in the case of the death, resignation or dismissal of the President of the Republic (the vacancy then being declared by the Constitutional Council) or in the case of permanent incapacity of the President (the matter is referred to the Constitutional Council by the Government and the former must declare the incapacity permanent by an absolute majority of its members). In such cases the interim is carried out by the President of the Senate who takes on all the powers of the President of the Republic with the exception of the right to dissolve the National Assembly, the right to call a referendum and the right to initiate legislation concerning revision of the Constitution.

Every French citizen having reached the age of twenty-three may be a candidate in the presidential election, provided he has obtained the sponsorship of five hundred nationally or locally elected officials. Additional provisions impose a geographical distribution of the sponsors (they must come from at least thirty different departments or overseas territorial units without more than one tenth coming from the same department or the same overseas territorial unit). The Constitutional Council must check the validity of the candidacies. In addition, each candidate who is officially announced must provide the Constitutional Council with a detailed declaration of his estate.

The official election campaign opens two weeks before the first round and continues, if need be, during the two weeks which separate the two rounds. In practice, the debates begin well before the official opening of the campaign. Each candidate must have a campaign account which is audited by the National Committee on Campaign Accounts and Political Financing (CCFP) with an appeal possible to the Constitutional Council. The CCFP checks in particular that the expenses of the official campaign do not exceed the legal limits. The State refunds 4.75% of the expenditure limit to each candidate who has received less than 5% of the votes cast, and 47.5% of the limit in the first and second rounds for each candidate who gains more than 5% of the votes cast.

The election is held according to a two-round majority system. Only the first two candidates after the first round go forward to compete in the second round. This second round is held fourteen days after the first.

The Constitutional Council is the sole judge of the election. It is in charge of the election litigation procedure and thus examines all disputes concerning operations both prior to the election as well as those dealing with the ballot itself.

Since the constitutional revision of July 23, 2008, paragraph 2 of article 6 of the Constitution provides that "no one may hold office for more than two consecutive terms".

2. – THE QUESTION OF THE LIABILITY OF THE PRESIDENT OF THE REPUBLIC

The definition of the liability of the President of the Republic given in 1958 in articles 67 and 68 of the Constitution has seemed over the years uncertain and ambiguous. Along with the uncertainty of the idea of "high treason", there is also an ambiguity regarding the scope of the provisions of article 68 concerning acts performed by the President outside the exercise of his duties. These provisions were indeed interpreted in a different way between 1999 and 2001 by the Constitutional Council and then by the Court of Cassation.

The constitutional revision of February 19, 2007 confirmed the traditional immunity granted to the President of the Republic concerning acts performed in the exercise of his duties, and introduced a temporary immunity concerning all his other acts which comes to an end at the same time as the presidential term of office.

a) The Maintaining of the Principle of the Non-liability of the President of the Republic Concerning Acts Performed in the Exercise of His Duties

This is a republican principle which has only two exceptions: the first concerning matters within the competence of the International Criminal Court and the second regarding a breach of duties by the President of the Republic patently incompatible with his continuing in office (this notion has replaced the previous idea of "high treason" following the constitutional revision of February 19, 2007).

The requirement of a ministerial counter-signature for many of the acts carried out by the President of the Republic is the corollary of this principle as it allows ministers to shoulder the political responsibility for the acts of the President of the Republic.

b) The New Temporary Immunity of the President of the Republic for Acts Performed Outside the Exercise of His Duties

Article 67 of the Constitution introduces total temporary immunity for the length of the presidential term of office, thus suspending in civil and criminal matters both all proceedings against the President of the Republic as well as the limitation period. This total temporary immunity comes to end one month after the end of the term of office.

During the term of office, this protection may only be removed by Parliament sitting as the High Court and dismissing the President for a breach of

his duties patently incompatible with his continuing in office, thus rendering him once more subject to trial by courts of ordinary law.

c) The Sitting of Parliament as the High Court to Dismiss, and No Longer Try, the President of the Republic

The new drafting of article 68 of the Constitution dating from February 19, 2007 now recognizes the power of the entire Parliament sitting as the High Court to dismiss the President of the Republic, instead of merely judging him, for "a breach of his duties patently incompatible with his continuing in office".

After the adoption by both the National Assembly and the Senate, in identical terms, of a motion ordering the convening of Parliament as the High Court, the latter must give its ruling on the dismissal by secret ballot within one month. Rulings given require a majority of two thirds of the members of the House involved and of the High Court. No proxy voting is allowed. Only votes in favour of the dismissal from office or the convening of the High Court are counted.

The decision of the High Court takes effect immediately.

II. – THE POWERS OF THE PRESIDENT OF THE REPUBLIC

1. – PERSONAL POWERS

These are powers the President of the Republic may exercise without counter-signature.

Powers of guaranteeing and arbitration

- In Constitutional Matters

Article 5 of the Constitution, in stating that "the President of the Republic sees to the respect of the Constitution", grants him in practice the power of interpretation of the Constitution (a power which Presidents have used on several occasions: e.g. the use of referendum for constitutional revision or the refusal to sign ordinances).

The right to appoint three members of the Constitutional Council and the right of referral to this institution (articles 59 and 61 of the Constitution) provided to the President of the Republic are also examples of his role as the guarantor of the institutions.

- In Judicial Matters

The President of the Republic is the guarantor of the independence of the judicial authority (article 64 of the Constitution). He is assisted in carrying out this mandate by the High Council of the Judiciary.

Powers during crisis

- The Emergency Powers granted by Article 16 of the Constitution

This provision, which grants the President of the Republic emergency powers of public safety, has its historic justification in the events of 1940 when the President of the Republic of the time, Albert Lebrun, although personally hostile to the armistice, had to give way and allow power to pass to Marshall Pétain. The crisis which France was crossing at the moment of the adoption of the 1958 Constitution (the Algerian War) also helps to explain this provision. In fact, article 16 has only been applied once. This was in 1961 following the attempted military putsch in Algiers.

Its provisions have always represented one of the most controversial points of the Constitution even if the subject has lost much of its topicality. In fact its use was somewhat restricted by the constitutional revision of July 2008.

For the President of the Republic to have recourse to the emergency powers of article 16, two basic conditions must be fulfilled at the same time:

– There must be "*a serious and immediate threat to institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments*". This particularly refers to war or to movements of insurrection;

– The proper functioning of the constitutional public authorities must be interrupted.

The President of the Republic must decide if these two conditions have been fulfilled. If he were to go beyond his rights, the Parliament could convene itself as the High Court and dismiss him for a breach of his duties patently incompatible with his continuing in office.

The formal conditions are not very restrictive and are limited to the consultation of the Prime Minister, the Presidents of the two assemblies and of the Constitutional Council (whose reasoned advice must be published in the *Journal officiel*).

In case article 16 is implemented, the distribution of powers provided for by the Constitution is no longer applicable and the President of the Republic assumes full power. He "*shall take measures required by these circumstances*". However the Constitution makes it clear that such measures "*shall be designed to provide the constitutional public authorities as swiftly as possible, with the means to carry out their duties*". The decisions taken by the President of the Republic are submitted for opinion to the Constitutional Council. During the period of

the implementation of the emergency powers, Parliament convenes as of right and the National Assembly may not be dissolved.

Since the revision of July 23, 2008, it has been made clear that after thirty days of the exercise of such emergency powers, the matter may be referred to the Constitutional Council by the President of the National Assembly, the President of the Senate, sixty Members of the National Assembly or sixty Senators, so as to decide if the conditions laid down concerning emergency powers in article 16 are still met. The Council shall make its decision public as soon as possible. It shall, as of right, carry out such an examination and shall make its decision in the same manner after sixty days of the exercise of emergency powers or at any moment thereafter.

- The Right of Dissolution

The discretionary right of dissolution belongs to the President of the Republic who must only, before carrying it out, consult the presidents of the assemblies and the Prime Minister.

The Constitution sets three limits. Dissolution may not be declared:

– During an interim presidency;

– During the period when the President of the Republic has the emergency powers provided for by article 16 of the Constitution at his disposal;

– During the twelve months following a previous dissolution.

Although it was originally foreseen either as a means to solve a serious crisis by asking the opinion of the people or as a way of deciding or preventing a disagreement with the National Assembly, dissolution has only been used twice for such reasons (1962 and 1968). In the three other cases, it was declared by the President of the Republic either at the beginning of a term to gain a majority in the National Assembly which would support his policies (1981 and 1988) or to bring forward an election to a moment considered more favourable (1997).

Prerogatives linked to relations with the other institutions

- With the Government: the President of the Republic appoints the Prime Minister and terminates his appointment; he convenes, approves the agenda of and chairs the Council of Ministers.
- With the Parliament: the President of the Republic communicates with the Parliament by messages. These messages are read aloud by the Presidents of each assembly and give rise to no debate; since the constitutional revision of 2008, the President of the Republic may also take the floor before Parliament convened in Congress for this purpose. His statement may give rise, in his absence, to a debate

without vote (this new procedure was implemented for the first time on June 22, 2009).

2. – SHARED POWERS

These are powers which the President of the Republic may only exercise with the counter-signature of the Prime Minister or, if need be, of one or more ministers concerned.

The power of appointment

- In accordance with article 8, paragraph 2 of the Constitution, the President of the Republic appoints ministers upon the proposal of the Prime Minister.
- The President of the Republic (article 13 of the Constitution) makes appointments to the civil and military posts of the State. This power which is shared with the Prime Minister (article 21) means that high-ranking civil servants as well as heads of public establishments and companies are appointed in the Council of Ministers. Nonetheless, since the constitutional revision of July 23, 2008, article 13 makes it clear that for certain posts or positions laid down in an Institutional Act, on account of their importance for the guaranteeing of the rights and freedoms or of the economic and social life of the Nation, the power of appointment vested in the President of the Republic is exercised after public consultation with the relevant standing committee in each assembly. The President of the Republic cannot make an appointment when the sum of the negative votes in each committee represents at least three fifths of the votes cast by the two committees.

The signature of ordinances and decrees

- The President of the Republic signs ordinances (measures which, although they fall within the ambit of statute, have been taken by the Government, empowered beforehand by Parliament, to use this procedure during a limited time).
- It has happened during a period of cohabitation that the President of the Republic has refused to sign ordinances. It may therefore be concluded that the President of the Republic does not, in such matters, have a binding competence.
- The President of the Republic also signs decrees which have been deliberated upon in the Council of Ministers.

The power to convene parliament in extraordinary session

- The President of the Republic may convene Parliament by decree to consider a specific agenda, in an extraordinary session, upon the request of the Prime Minister or of a majority of the members making up the National Assembly (article 29 of the Constitution).
- Institutional practice does not make this a binding competence, as the decision to convene Parliament is taken under the sole responsibility and the sole assessment of the President of the Republic.

Recourse to referendum

There are three types of national referendums, only the decision to have recourse to a legislative referendum is not submitted to counter-signature but requires the prior intervention of the Parliament or the Government.

- The constituent referendum which requires a counter-signature (article 89, paragraph 2 of the Constitution) is a procedure which requires the prior passing of the bill by the two assemblies in identical terms. Once the bill has been passed, the President of the Republic may submit it to a referendum or submit it to Parliament convened in Congress which will rule by a majority of three fifths of the ballots cast (if the bill is a Member's bill, then recourse to a referendum is obligatory). With the exception of the referendum of September 24, 2000, on the five-year presidential term, the Congressional method has always been used.
- The legislative referendum (article 11 of the Constitution) is a procedure which is initiated by the Government or the Parliament (in practice the latter has never used it). The Government or the two assemblies in a joint proposal, refer the matter to the President of the Republic who decides without countersignature whether to consult the people or not. If the proposal comes from the Government, then the latter must make a statement followed by a debate in each assembly. The field of application of article 11 is huge and can be subject to a wide variety of interpretations. It covers the organization of public authorities, the ratification of a treaty that has an effect on the functioning of the institutions (e.g. the Treaty on European Union, 1992, the Treaty setting up a Constitution for Europe, 2005) or reforms relating to economic and social policies. After the proclamation of the results by the Constitutional Council, the President of the Republic promulgates the referendum law.
- The referendum of article 88-5 of the Constitution requires a counter-signature. This procedure is intended for bills authorizing the ratification of a treaty concerning the membership of a state to the European Union. The scope of this provision, which was passed in

2005, was nonetheless reduced in July 2008, as, from now on, by means of a motion adopted in identical terms by each assembly with a three fifths majority, Parliament may authorize the passing of such a bill by Congress.

In addition, as of 2003, the President of the Republic may consult the voters of an overseas territorial unit on a question "*relating to its organisation, its powers or its legislative system*" or on its change of status (article 72-4 of the Constitution). The procedure is the same as that used for article 11. This provision was used in 2003 in Martinique, in Guadeloupe, in Saint-Martin and in Saint-Barthélemy, in 2009 in Mayotte and in 2010 in French Guiana and again in Martinique.

Powers in matters of diplomacy and defence

- The Constitution establishes a shared competence in these areas: the President of the Republic is the "Commander-in-chief of the armed forces" (article 15), he "negotiates and ratifies treaties" (article 52). On the other hand, it is the Government which "determines and conducts the policy of the Nation" and which "has the armed forces at its disposal" (article 20).
- Institutional practice has made these matters the "reserved domain" of the President of the Republic when he has a parliamentary majority and a shared domain during periods of cohabitation. It can be considered that the "reserved domain" has been broadened since the Decree of May 15, 2002 which granted the President of the Republic the presidency of the Council of Domestic Security.

The power to promulgate laws

- The President of the Republic, by decree countersigned by the Prime Minister, promulgates laws within fifteen days following the transmission of their adopted text to the Government. During this period, he may request a new deliberation of the law passed (also with the counter-signature of the Prime Minister).

The right to grant pardon

- This is a traditional prerogative of heads of state which has been inherited from the monarchy and which allows the President of the Republic to grant pardon to a convicted prisoner and thus not carry out all or part of his punishment.
- The constitutional revision of July 23, 2008, made it clear that pardon must be granted on an individual basis; thus, collective pardons may no longer be allowed.

III. – INSTITUTIONAL PRACTICE

Beyond the constitutional distribution of powers between the two heads of the executive, the main element which grants pre-eminence to the President of the Republic over the Prime Minister is, of course, his election by direct, universal suffrage. The role of the Head of State cannot be reduced, as it was in the previous Republics, to that of a simple figurehead. His action cannot be limited, in the words of General de Gaulle, "to the inauguration of chrysanthemums".

In practice, it is clear that the breadth of the powers of the President of the Republic varies according to whether or not the governing majority in the National Assembly coincides with the popular majority which elected him.

In the first case, the Head of State freely chooses his Prime Minister who is then subordinate to him. The President of the Republic can even ask for the Prime Minister's resignation. Thus, although the provisions of article 20 of the Constitution state that it is the Government which determines and conducts the policy of the Nation, the President of the Republic sets at least the general directions of such policy.

During periods of "cohabitation", i.e. when a governing majority hostile to the policy of the President of the Republic is elected to the National Assembly, the situation is altogether different. The President of the Republic must choose the Prime Minister from within that hostile governing majority so that the Government maintains the support of the National Assembly. As for the appointment of ministers in such a situation, practice has shown that the President of the Republic has, at the very most, a right of veto for certain so-called 'sovereign' portfolios. In the field of home affairs, the influence of the Head of State is considerably reduced.

It is only, in fact, in the field of foreign policy, an area in which the Constitution expressly recognizes his personal powers, that the President of the Republic keeps most of his prerogatives, although he must exercise them in collaboration with the Prime Minister.

Thus, the breadth of the powers of the President of the Republic and, consequently, the nature of the system, depend, in fact, on the political situation. However, the reduction from seven to five years of the presidential term of office and the fact that the presidential elections now precede the general elections should limit the cases of coexistence between a President from one political wing and a National Assembly from the other. The pre-eminence of the President of the Republic has thus been increased.

File n°3

The Government

Key Points

The Government is led by the Prime Minister. It is appointed by the President of the Republic and it represents the second half of the twin-headed executive set up by the 1958 Constitution.

It is made up of ministers who are appointed by the President of the Republic upon a proposal of the Prime Minister.

The Constitution entrusts it with determining and conducting the policy of the Nation.

It is headed by the Prime Minister who holds regulatory power. He also plays a central role in the legislative procedure as he has the right to initiate bills and control over part of the parliamentary agenda. He may be empowered by Parliament to legislate by means of ordinances.

☞ *See also files 1, 2, 4, 5, 6, 25, 26, 27, 28, 32, 33, 39, 40, 45, 46, 51 and 52*

I. – SETTING-UP AND RESIGNATION OF GOVERNMENT

1. – THE ESTABLISHMENT OF THE GOVERNMENT

The choice of the Prime Minister is a prerogative of the President of the Republic alone. Article 8 of the Constitution provides however that the appointment of ministers is carried out by the head of state upon a proposal of the Prime Minister.

Although such choices are not regulated by any conditions (e.g. there is no obligation for the Prime Minister or the other ministers to be parliamentarians), the correct working of the institutions and democratic practice do impose on the President of the Republic to choose a Prime Minister representing the majority in Parliament.

2. – GOVERNMENT RESIGNATION

Article 8 of the Constitution states that the President of the Republic shall terminate the appointment of the Prime Minister when the latter tenders the resignation of the Government.

Such a resignation may come about:

– As the result of a vote of no-confidence by the National Assembly on the Government's programme or on a statement of its general policy (in accordance with article 49, paragraph 1 of the Constitution – such a case has not, as yet, occurred) or of the adoption of a censure motion (in application of article 49, paragraph 2 of the Constitution. This procedure has in fact been used only once in 1962);

– Systematically (following a presidential election);

– Voluntarily (in the wake of general elections or as a means of carrying out a large-scale ministerial reshuffle without actually changing the Prime Minister);

– By obligation, and thus tantamount to dismissal by the President of the Republic.

The office of the other members of the Government comes to an end:

– If the Government's resignation is tendered by the Prime Minister;

– If the President of the Republic announces their "dismissal" upon a proposal of the Prime Minister;

– If an individual resigns.

II. – THE STATUS OF MEMBERS OF THE GOVERNMENT

1. – RANK

The Government is made up of the Prime Minister and ministers.

Among the ministers, several categories can be listed:

– Ministers of state. This is an honorary title sometimes given to the heads of the main parties or movements within the governing majority. It provides them with precedence over "ordinary" ministers, from a protocol point of view. Nowadays they always head a ministerial department (the title of Minister of State Without Portfolio has now disappeared);

– Ministers. They head the administration placed under their authority but do not hold regulatory power (this is solely in the hands of the Prime Minister), except in order to take measures necessary for the correct operation of their departments;

– Associate ministers. They report either to the Prime Minister or to other ministers;

– Secretaries of state. They may either be autonomous (and thus have their own budget, power of countersignature and authority over their departments) or report to another minister. Generally speaking they do

not attend the Council of Ministers. The Government of Jean-Marc Ayrault, appointed in 2012, includes no secretaries of state.

– Certain governments have also included high commissioners.

– There is no limit on the number of members of the Government.

2. – OBLIGATIONS AND INCOMPATIBILITIES

Members of Government must, in the two months following their appointment, make a declaration of their estate to the Chairman of the Committee for Financial Transparency in Political Life. They must make a similar declaration within the two months following the end of their ministerial office.

In addition ministerial office is considered incompatible with various other activities:

– In accordance with the principle of the separation of powers, a member of the Government may not simultaneously be a parliamentarian. Such incompatibility only takes effect one month after the appointment of an M.P. or a Senator to the Government. During this interim, the parliamentarian may not take part in votes but he remains, at least formally, a member of the bodies of the assembly in which he sat prior to his appointment to Government. At the end of this one-month period, the President of the National Assembly formally records the replacement of the minister by the "person elected at the same time as him for that purpose", i.e. his substitute whose name is communicated beforehand by the Home Office. The new wording of the second paragraph of article 25 of the Constitution set down in July 2008 provides that, according to the conditions laid down in an Institutional Act (Institutional Act no. 2009-38 of January 13, 2009), this replacement is of a temporary nature. It shall elapse at the end of a one-month period following the withdrawal of the minister from office. During this time the former minister may not give up his seat in favour of his substitute. Unless he resigns and thus triggers a by-election, he will thus automatically retake his seat.

– A member of Government may not hold a job as a public servant (civil servants entering Government are thus given the status of being "on secondment") or as a private sector professional (including the liberal professions). It is also impossible to combine governmental offices with the position of being a representative of a professional body (including the Economic, Social and Environmental Council).

3. – INDIVIDUAL LIABILITY

- Political Liability

Each member of the Government is politically liable for the actions of his administration. The non-fulfilment of this responsibility may lead to dismissal or resignation.

- Criminal Liability

Ministers and secretaries of state are likewise criminally liable for all acts carried out in the exercise of their office if such acts are defined as crimes or offences at the moment they were committed. They are tried by the Court of Justice of the Republic which was set up in 1993 and is made up of 12 parliamentarians (6 M.P.s and 6 Senators) and three judges of the Court of Cassation (one of whom presides over the Court).

III. – THE PRIME MINISTER

1. – LEADERSHIP OF THE GOVERNMENT

The Prime Minister directs the actions of the Government (article 21 of the Constitution).

He thus personifies and represents the Government and speaks on its behalf (during the presentation of its programme or the seeking of confidence for its policies in Parliament in particular).

He carries political authority over the members of the Government. This is particularly displayed through his power of coordination of Government action and through his power of arbitration in the case of disputes between ministers. He chairs inter-ministerial committees.

He is assisted in the carrying out of his office by his staff and by the General Secretariat of the Government (a body which in particular, is in charge of preparing, along with the General Secretariat of the Presidency of the Republic, the agenda for the Council of Ministers and of listing its decisions. The General Secretariat of the Government also refers bills submitted to the Council of Ministers for advice to the *Conseil d'État*, seeks the signature of the Prime Minister on the presentation decrees for bills, follows the legislative procedure, promulgates the laws which have been passed and publishes the statutory texts which have been adopted as well as organizing inter-ministerial meetings.

2. – THE POWER TO MAKE REGULATIONS

The Prime Minister has the power to make regulations and to make appointments to civil and military posts (article 21 of the Constitution). It is thus his responsibility to make the regulations necessary to implement the laws. These regulations are, if need be, countersigned by the minister or ministers in charge of their application.

These powers to make regulations and appointments are nonetheless shared with the President of the Republic in the case of decrees and nominations to very high posts in the Council of Ministers. They may be delegated to ministers but the latter do not possess such powers for themselves, having only the power of administration over their own ministerial department.

3. – THE ROLE OF THE PRIME MINISTER IN THE LEGISLATIVE PROCEDURE

The Prime Minister plays an important role in the legislative procedure.

This is the case, first of all, because he is the only person in the executive branch to have the power to initiate laws.

Secondly because he is very much in charge of the running of the procedure: he chooses the assembly before which the bill will be introduced (with the exception of the rare cases in which priority tabling is provided for by article 39 of the Constitution), he has control over part of the agenda of Parliament, he chooses the amendments to be tabled in the name of the Government, and he may decide to opt for certain procedures (accelerated procedure, convening of a joint committee, forced vote etc.). It should be noted however that in the course of the discussion of a bill, some of these powers may be carried out by the minister directly concerned (right of amendment, forced vote).

4. – OTHER POWERS

In addition to the aforementioned powers, the main power of the Prime Minister is the fact that he must countersign the acts of the President of the Republic (with the notable exception of a recourse to a legislative referendum, the decision to dissolve the National Assembly, a recourse to the emergency powers provided by article 16, as well as appointments to the Constitutional Council and to the High Council of the Judiciary).

The other individual powers

– The Prime Minister may, without consulting the Council of Ministers:

- Refer, before their promulgation, laws to the Constitutional Council (article 61 of the Constitution) as well as international commitments (article 54);
- Request the agreement of the Senate on a statement of general policy (article 49, paragraph 4);
- Decide, after consulting the President of the assembly in question, to have one of the two the assemblies sit for more than 120 days during the same ordinary session (article 28, paragraph 3);
- Request the President of the Republic to convene Parliament in extraordinary session (article 29, paragraph 1);
- Request the President of the Republic to take the initiative of a revision of the Constitution (article 89);
- Provide the head of state with his opinion concerning a possible dissolution of the National Assembly and recourse to the use of the emergency powers of article 16.

In exceptional circumstances, the Prime Minister may replace the President of the Republic in presiding over the Council of Ministers.

The other powers shared with the President of the Republic

Most of the powers shared by the two heads of the executive have already been described (appointment of the members of Government, power to make regulations and appointments to civilian and military posts). The only powers remaining to be described are those in the field of defence matters – the Constitution makes the President of the Republic the Commander-in-chief of the Armed Forces but grants the Prime Minister the responsibility for national defence.

IV. – THE POWERS OF THE GOVERNMENT

1. – THE CONDUCT OF THE POLICY OF THE NATION

Article 20 of the Constitution provides the Government with the responsibility of "determining and conducting the policy of the Nation". In practice, as the main decisions are taken in the Council of Ministers, this governmental power is, in fact, shared with the President of the Republic, when the Prime Minister belongs to the same political family.

2. – THE EXERCISE OF LEGISLATIVE POWER BY DELEGATION

The Constitution allows Parliament to delegate its legislative power to the Government by means of ordinances.

There are several types of ordinances:

– Ordinances taken according to article 38 of the Constitution which allow the Government "in order to carry out its programme, to ask Parliament for the authorization, for a limited period, to take measures by ordinance that are normally a matter for statute", (recourse to ordinance is impossible for provisions which fall within the ambit of the Constitution or institutional acts).

  Thus, the Government must, first of all, have tabled a draft enabling law before Parliament describing the measures envisaged and the length of the delegation of power. Once the law has been passed, the ordinances are submitted to a double procedural constraint:

  - They must be examined for consultation by the *Conseil d'État*;
  - They must be adopted by the Council of Ministers. This requires the signature of the President of the Republic (who can refuse, as he has done during periods of cohabitation).

Before the end of the enabling period, a draft ratification bill must be tabled before Parliament. Ratification may only be carried out in explicit terms.

– Ordinances taken in accordance with articles 47 and 47-1 of the Constitution. These deal with the case of Parliament not respecting the time limits imposed for the adoption of the finance bill or the social security financing bill. This procedure has never been applied.

– Ordinances taken in accordance with article 74-1 of the Constitution. These represent the sole permanent delegation of legislative power. These allow the Government, in a variety of circumstances, to extend and at the same time adapt, the law of continental France to its overseas territorial units.

3. – EXTRAORDINARY POWERS IN MATTERS OF BREACHES OF THE PEACE

– State of Siege

This is provided for by article 36 of the Constitution and deals especially with situations linked to war and insurrection. It has never been applied during the Fifth Republic particularly because the emergency powers granted to the President of the Republic under article 16 of the Constitution have largely taken away its need. The state of siege must be decreed by the Council of Ministers and its extension beyond twelve days requires the authorization of Parliament. It is characterized by a transfer from civilian authority to military authority.

– State of Emergency

This is provided for by law no. 55-385 of April 3, 1955 and deals with "*the imminent danger of serious breaches of the peace or events which might lead to very grave circumstances*". As with the state of siege, the state of emergency is decreed by the Council of Ministers and its extension beyond 12 days must be authorized by Parliament. It was used in New Caledonia in 1985 and in continental France in order to deal with the troubles in the suburbs in 2005.

File n°4

The National Assembly and the Senate – General Characteristics of the Parliament

Key points

The French Parliament is bicameral and is made up of the National Assembly, a Chamber elected by direct universal suffrage, and the Senate, elected by indirect universal suffrage and empowered by the Constitution with representing the territorial units of the Republic.

The excesses of parliamentary sovereignty of the Third and Fourth Republics led the framers of the 1958 Constitution to limit the powers of the assemblies by laying down rules based on "rationalized parliamentarism".

The need to modernize parliamentary institutions has allowed the assemblies to gradually assert and clarify their role within the institutions of the Republic. This role is characterized in particular by the constant development of the monitoring activities concerning the executive.

☞ *See also files 14 to 57*

The general characteristics of the legislative branch of power in France can be summed up in a double statement:

– The legislative branch is bicameral: it is shared in an unequal division between two parliamentary assemblies;

– Its functioning is limited by rules inspired by "rationalized parliamentarism".

I. – BICAMERALISM

1. – GENERAL CHARACTERISTICS OF FRENCH BICAMERALISM

The French Parliament of the Fifth Republic is bicameral: it is made up of the National Assembly and the Senate. The two assemblies sit in two distinct premises (the National Assembly in the *Palais Bourbon* and the Senate in the *Palais du Luxembourg*).

Bicameralism was long considered in French constitutional history either as a means to curb the excesses of single assemblies (in 1795, as a reaction to the all-powerful nature of the Convention, or during the Second Empire, after the period of the Second Republic of 1848-1851) or as a way to consolidate the executive through the splitting-up of the legislative branch (this was brought to its extremes with the Constitutions of the Consulate and the Empire which set up a tricameral Parliament).

Modern bicameralism is very different, as the second assembly is seen in many countries (e.g. Germany, Belgium, Spain, the United States etc.) as the seat of territorial representation, particularly in federal states where it represents the need to ensure the representation of the federated states alongside that of the population. A similar choice was made in France. The Constitution of the Fifth Republic thus set up a bicameral system in which two assemblies coexist: a National Assembly which is elected by direct universal suffrage and represents the citizens and a Senate which is elected by indirect universal suffrage and represents the territorial units of the Republic.

As is the case with other Parliaments made up of two assemblies (with the notable exception of the Italian Parliament), French bicameralism is an unequal system as the National Assembly has much broader powers than those of the Senate:

- It alone can call the Government to account by refusing to grant it its confidence or by passing a censure motion (following the same idea, only the National Assembly can be dissolved by the President of the Republic);
- In the case of disagreement with the Senate, the Government can decide to grant the National Assembly "the final say" in the legislative procedure (except for constitutional acts and institutional acts concerning the Senate);
- The Constitution provides the National Assembly with a more important role in the examination of the finance bill and the social security financing bill. Thus the tabling for a first reading of such bills must be before the National Assembly and the time limits granted for their examination are much longer for the National Assembly.

In almost all other areas the two assemblies are provided with the same powers.

If the two assemblies do not have the same powers, they also do not have the same renown. Citizens know the National Assembly and the M.P.s whom they have elected much better. In addition, the media cover the proceedings of the National Assembly much more closely as its debates are more central to the main political issues and because the vast majority of the important political leaders are or have been M.P.s.

2. – THE SENATE OF THE FIFTH REPUBLIC

The first characteristic of the Senate is its permanence: in contrast with the National Assembly, it cannot be dissolved. This permanence is the main justification for the Constitution of the Fifth Republic to grant the provisional exercise of the office of the President of the Republic to the President of the Senate if the former is prevented from doing so, if he resigns or if he dies. This interim is limited to the time needed to organize a presidential election (in practice, it lasts around 50 days).

The specificity of the Senate lies in the role of the representation of the territorial units which is granted to it by article 24 of the Constitution. The method of electing Senators ensues from this role.

The Senate is made up of 348 Senators (there were 321 before the revision of 2003 which provided for a gradual increase in the numbers) who are elected by indirect universal suffrage for six years. Half the Senate is renewed every 3 years.

The Senators are elected by a college of around one hundred and fifty thousand grand electors (who are required to participate in the vote). This college is made up of:

- M.P.s, regional councillors, councillors of the Assembly of Corsica, departmental councillors and councillors of the City of Paris;
- Delegates of the municipal councils whose number depends on the population of the municipality:
  - 1 to 15 delegates for municipalities of less than nine thousand inhabitants;
  - All the municipal councillors for municipalities of between nine thousand and thirty thousand inhabitants;
  - The entire municipal council plus a supplementary delegate (elected by proportional ballot by the municipal council itself) for every thousand inhabitants in municipalities of over thirty thousand inhabitants.

This system leads to a very strong representation for small rural municipalities within the college of grand electors since there are around thirty thousand municipalities of this type in France.

The voting method varies according to the constituency:

- In the constituencies electing fewer than four senators, the method is a two-round majority system;
- In those electing four or more Senators (i.e. the fifteen most populous departments), the method is one of proportional representation with the

application of the rule of the highest average for the distribution of the remaining votes.

All candidates for the office of Senator must be, at least, twenty-four years old.

This role of representation of territorial units explains why article 39 of the Constitution recognizes that bills concerning the organization of such units are first presented to the Senate.

Before the constitutional revision of July 23, 2008 it was the Senate and the Senate alone which represented the French living abroad. The latter elect 12 Senators by indirect suffrage. It was for this reason that the Senate examined, before the National Assembly, all bills dealing with bodies representing French people living outside of France. However, the French living abroad are now represented at the National Assembly as well as in the Senate. This situation has led to the abolition of the priority consideration of such bills previously granted to the Senate.

II. – RATIONALIZED PARLIAMENTARISM

1. – APPLICATION OF THE PRINCIPLES OF RATIONALIZED PARLIAMENTARISM

One of the main aims of the framers of the 1958 Constitution was to limit the excesses of parliamentary sovereignty, which were one of the principle causes of the governmental instability which had prevailed during the Third and Fourth Republics.

According to Michel Debré, “Governmental stability cannot first of all be the result of an electoral law but must be that of constitutional rule”. The latter was to be composed of “four series of measures:

– A very strict calendar of sessions;

– An attempt at defining the ambit of statute;

– A profound reorganization of the legislative procedure;

– An adjustment of the legal mechanisms necessary for the balance and the correct operation of the political institutions”.

The formulation of these principles in the Constitution in 1958 took a variety of forms:

– Two sessions of around three months each per year;

– Control of the agenda of the assemblies by the Government;

– Limitation of the right of parliamentarians to initiate legislation and to amend concerning the ambit of statute as defined by the Constitution and the rules of financial admissibility;

- Prior examination by the Constitutional Council of the Rules of Procedure of the assemblies;
- Limitation to six of the number of standing committees;
- Broad control by the Government of the legislative procedure (declaration of emergency, convening of joint committees, recourse to a forced vote etc.);
- Strict limitations placed on the budgetary procedure;
- Possibility of having a law passed without a vote unless the Government is defeated (article 49, paragraph 3 of the Constitution);
- Strict definition of the conditions of votes of no-confidence in the Government.

2. – THE MODERNIZATION OF THE ROLE OF PARLIAMENT

All of these measures had, as their primary objective, the limitation of the role of Parliament. In fact, a certain retreat in Parliament's role can be noticed in the years which immediately followed the setting-up of the new system. The strong personality of General de Gaulle, the first President of the Fifth Republic, along with the fact that the excesses of the Parliament of the Fourth Republic were still to the forefront of people's minds, can explain this temporary decline in the role of the parliamentary institution.

However, by exploring the avenues of modernization, Parliament has gradually regained quite an amount of its influence. Several reforms which have been implemented over the course of the last two decades bear witness to this development:

- The constant increase in the monitoring activities of Parliament (the proliferation of committees of inquiry, the setting-up of information missions within standing committees, the birth and development of the procedures of questions to the Government, the establishment of several parliamentary offices and delegations etc.);
- The introduction, in 1995, of the single ordinary session of nine months instead of the system based on two three-month sessions;
- The intervention of Parliament since 1996 on the question of the financing of social security through the adoption of a new type of law;
- The implementation, since 2005, of a new procedure for the adoption of finance bills which has greatly strengthened Parliament's role in the budgetary area.

The constitutional revision of July 23, 2008 has introduced several important developments in this direction which should lead to a distinct strengthening of the role and the powers of Parliament:

- Before 1995, one sitting per month was given over to a priority agenda set by each assembly. Today the Constitution provides for the sharing of the control of the agenda between each assembly and the Government. Two out of four weeks are reserved for the priority consideration of bills and for debates requested by the Government, but the other two weeks are given over to an agenda set down by each assembly; nonetheless the Government may always have priority to include on the agenda several types of bill such as finance bills and social security financing bills;
- The increase of the powers of Parliament in the legislative procedure: the Government is now required to respect, upon first reading, a six-week period between the tabling of a bill and its discussion in plenary sitting or a four-week period between its transmission by the assembly where it is first tabled and the discussion, except when it has implemented the accelerated procedure; the latter now replaces the declaration of emergency and the Conferences of Presidents of the two assemblies may jointly oppose its implementation; bills must now be accompanied by impact studies; the discussion of bills in plenary sitting, with the exception of some such as the finance bill, now deals directly with the text adopted in committee; the presidents of the two assemblies may jointly call for the meeting of a joint committee on a Member's bill;
- The restriction of the possibility for the Government to call on the provisions of article 49, paragraph 3 (the passing of a bill without a vote) to a single bill during any one session, outside of finance bills and social security financing bills upon which they may make their accountability an issue of confidence;
- The development of the means of monitoring and assessment through the increase in the number of standing committees (from six to eight), through the creation at the National Assembly of a Committee for the Assessment and Monitoring of Public Policies and through the introduction of the assisting of Parliament by the Court of Auditors in the oversight of Government action and in the assessment of public policies;
- The submitting of certain appointments formerly solely within the remit of the President of the Republic to the opinion of the relevant standing committees in each assembly;
- The informing of Parliament by the Government of its decision to have the armed forces intervene abroad and, when such an intervention lasts longer than four months, the obligation for the Government to submit such an extension to the agreement of Parliament.

File n° 5

The Congress of Parliament

Key Points

Under the Fifth Republic, Congress is the meeting of the two Houses of Parliament (the National Assembly and the Senate).

It may be convened in three cases: for a revision of the Constitution; to approve the membership of a state to the European Union; to hear a declaration of the President of the Republic. In the latter case, the statement may give rise, in the absence of the Head of State, to a debate without vote.

When Congress is required to vote on a Government-sponsored or Parliament-sponsored constitutional bill or on the membership of a state to the European Union, it may not, contrary to a legislative assembly, avail of the right to amendment.

Congress is convened by the President of the Republic and sits in the *Château de Versailles*, in the Chamber referred to as the '*Aile du Midi*'.

It has its own Rules of Procedure but its *Bureau* is that of the National Assembly.

☞ *See also files 2, 30 and 43*

Under the Fifth Republic, Congress is the meeting of the two Houses of Parliament (the National Assembly and the Senate).

I. – THE THREE CASES FOR THE CONVENING OF PARLIAMENT IN CONGRESS

The Constitution nowadays provides for three cases for the convening of Congress:

– since 1958, Congress may be convened in order to revise the Constitution: one of the two procedures which may lead to the revision of the Constitution, as laid down in article 89, provides that instead of submitting a constitutional reform bill passed in the same terms by the National Assembly and the Senate, to a referendum, the President of the Republic may decide to submit it to Parliament convened in Congress. In this case the bill is passed only if it obtains a three fifths majority of votes cast. Since 1958, twenty-one out of twenty-four constitutional revisions have been passed by Congress during sixteen meetings;

– since 2008, Congress may also be convened to hear a declaration of the President of the Republic: the revision of July 23, 2008 included in paragraph 2 of article 18, the possibility for the Head of State to "take the floor before Parliament convened in Congress for this purpose. His statement may give rise, in his absence, to a debate without vote". Upon the first use of this provision on June 22, 2009, the declaration of the President of the Republic was followed by a debate;

– finally, Congress may, also since 2008, be convened to approve the membership of a state to the European Union (article 88-5 of the Constitution): even though bills concerning membership are, in principle, submitted to referendum, Parliament may decide, by adopting a motion passed in identical terms by a three fifths majority in each assembly, that such a bill may be submitted to Congress. In such a case, the bill must be passed by a three fifths majority of the votes cast.

II. – THE WORKING OF CONGRESS

1. – CONVENING AND CLOSING

The President of the Republic convenes Congress by a countersigned decree which sets the agenda. However the closing of Congress is announced by the President of Congress (who is the President of the National Assembly).

2. – SEAT

The Congress sits in the *Château de Versailles*, in the Debating Chamber of the *Aile du Midi*.

These particular premises have long been associated with Parliament since the National Assembly was in fact born in Versailles after the delegates of the Third Estate to the Estates General were refused access to the *Salle des Menus Plaisirs*, and moved to the *Salle du Jeu de Paume* where they swore their oath on June 20, 1789.

After the defeat of 1870, the national representation sat at Versailles between March 1871 and August 1879 and it was only once the Republic had been properly established that it moved definitively to Paris. It would only return to Versailles from time to time – for the election of the President of the Republic under the Third and Fourth Republics as well as for constitutional revisions under the Fifth Republic.

Since law n° 2005-844 of July 26, 2005, only "the Debating Chamber of the Congress and its accesses are allocated to the National Assembly and the Senate" and "the other premises necessary for the holding of the Congress of Parliament located at the Château de Versailles, will be, as and whenever necessary, made available for no charge, to the National Assembly and the Senate".

3. – ORGANIZATION

– The Rules of Procedure of Congress

Congress is run according to its own Rules of Procedure which are based on the Rules of Procedure of the National Assembly. Upon the passing of these Rules of Procedure in 1963, the Constitutional Council recognized itself as competent to judge their conformity to the Constitution given that Congress was considered a parliamentary assembly in the sense of article 61, paragraph 1 of the Constitution (decision 63-24 DC of December 20, 1963).

The Rules of Procedure were last modified on June 22, 2009 to introduce the possibility for the President of the Republic to make a speech before Congress as provided for by the constitutional revision of July 23, 2008.

As for the National Assembly, the "General Instructions of the *Bureau*" lay down the mechanisms for the implementation of the Rules of Procedure of the Congress.

– The Managing Bodies

Congress is managed by a "Bureau with full power to preside over the deliberations of Congress and to organize and direct all departments" (article 3 of the Rules of Procedure of Congress).

This *Bureau* is the *Bureau* of the National Assembly.

The President of the Congress is tasked with guaranteeing the internal and external security of the Congress.

During the sitting, he directs the deliberations, enforces the Rules of Procedure, keeps order and informs Congress of the communications which concern it.

– The seating of the Members of Congress

The Members of the National Assembly and the Senators are not seated in the Chamber by political groups as at the National Assembly and the Senate, but by alphabetical order according to their last name.

4. – RULES CONCERNING THE PROCEEDINGS OF CONGRESS

a) The Deliberations of Congress

When Congress is required to vote on a Government-sponsored constitutional bill or on the membership of a state to the European Union, it may not, contrary to a legislative assembly, avail of the right to amendment. In a similar fashion to when the people votes by referendum, Congress may only approve or reject the text submitted to it.

However, as a legislative assembly, Congress does deliberate. Its President for example, may authorize points of order. He may also give the floor for explanations of vote.

Although the Rules of Procedure of the Congress state that Congress "shall usually vote by show of hands on all matters", it also sets down that a public ballot shall be held as of right upon the decision of the President, upon the request of the Government, upon the request personally penned by a chairman of one of the groups of either of the assemblies (or by his representative) or when the Constitution requires a qualified majority. Thus votes on constitutional revisions give rise by definition to a public ballot. These ballots are held by means of electronic ballot boxes in the rooms adjacent to the Chamber. In practice, voting by show of hands is usually reserved for draft motions aimed at amending the Rules of Procedure of Congress.

b) Statement by the President of the Republic

Contrary to the cases provided for in articles 88-5 and 89 of the Constitution, the statement by the President of the Republic does not give rise to a vote. Article 23 of the Rules of Procedure of Congress describes in detail the procedure which should be followed in this particular case.

The debate which follows the statement (and which according to the Constitution can only be held in the absence of the Head of State) is granted as of right if requested by the chairman of one of the political groups of either of the assemblies at the latest by midday on the eve of the Congress. It may also be decided upon by the *Bureau* of the Congress.

At the time appointed for his statement, the President of the Republic is ushered into the Chamber upon the order of the President of Congress who immediately gives him the floor. Upon the conclusion of his statement, the President of the Republic is shown out of the Chamber in the same way. The sitting must then be suspended or closed. No Member of Congress is allowed to speak during the statement.

c) Discipline

Articles 70 to 77 inclusive of the Rules of Procedure of the National Assembly concerning discipline are applied during Congress.

File n°6

The Constitutional Council

Key Points

Long considered as undermining the expression of the wishes of the Nation, the monitoring of the constitutionality of laws has only really existed in France since 1958. It is in the hands of the Constitutional Council, a body which played only a limited role in the first years of the Fifth Republic.

Several constitutional revisions (in particular that of 1974 which allowed parliamentarians to refer laws not yet promulgated to the Constitutional Council and that of 1992 which broadened its field of application to treaties) combined with the very jurisprudence of the Council, have enabled it to find its rightful place within the institutions and to exercise its authority both in matters concerning the monitoring of the constitutionality of the laws as well as in the area of electoral litigation.

This development was continued by the recognition in July 2008 of the possibility of a referral to the Constitutional Council if, during proceedings in progress before a court of law, a person involved in such proceedings claims that a statutory provision infringes the rights and freedoms guaranteed to him by the Constitution.

☞ *See also files 2, 3, 4, 5, 29, 31, 39 and 41*

I. – COMPOSITION

1. – MEMBERS BY RIGHT

Former Presidents of the Republic are life members by right of the Constitutional Council.

2. – APPOINTED MEMBERS

Nine members are appointed for nine years. Three of them are appointed by the President of the Republic, three by the President of the Senate, and three by the President of the National Assembly. One third of the Council is renewed every three years and each of the three personalities who may appoint members does so once every three years. The President of the Constitutional Council is appointed by the President of the Republic.

Since the constitutional revision of July 2008 and in accordance with the procedure laid down by the Institutional Law of July 23, 2010, these appointments must follow the procedure provided for in the last paragraph of article 13 of the Constitution (public consultation with the standing committee in

charge of constitutional laws in each assembly; impossibility of making an appointment when the sum of the negative votes in each committee represents at least three fifths of the votes cast by the two committees). Nonetheless the appointments made by the presidents of each assembly are only submitted for the advice of the standing committee in charge of constitutional laws in the assembly concerned.

II. – STATUS OF THE MEMBERS OF THE CONSTITUTIONAL COUNCIL

There is no age limit or professional qualification required to be a member of the Constitutional Council.

Before taking office the members of the Constitutional Council take an oath before the President of the Republic.

Their status aims at guaranteeing their independence:

– Their position is irrevocable;

– Their term of office is not renewable (however, in the case of the replacement of a councillor during his term and within three years of the end of such a term, the replacement may be reappointed for an entire term);

– The rules of non-combination of office are very strict. Council members may not be members of the Government, of the Parliament, of the European Parliament or of the Economic, Social and Environmental Council. They may not hold any elected office and may not carry out any managerial functions in companies or leadership positions in political parties;

– If these rules of incompatibility are broken the councillor in question is required to resign from office;

– They are required to observe a duty of secrecy concerning deliberations, may not give consultations and may not express a political position on matters which have been or may be the subject of a decision of the Constitutional Council.

III. – MISSIONS OF THE CONSTITUTIONAL COUNCIL

1. – CONSULTATIVE POWERS

The President of the Republic must consult the Constitutional Council when he decides to use the emergency powers granted to him by article 16 of the Constitution (the opinion of the Council is published in the *Journal officiel*). Measures taken in accordance with article 16 require the prior consultation of the Constitutional Council. Since July 2008, article 16 provides that after thirty days of the exercise of emergency powers, the matter may be referred to the

Constitutional Council by the President of the National Assembly, the President of the Senate or sixty Members of the National Assembly or sixty Senators so as to ascertain if the conditions laid down by the Constitution concerning such powers, still apply. The Council shall, as of right, carry out such an examination after sixty days.

In addition, the Government consults the Constitutional Council on preliminary instruments concerning the organization of votes during presidential elections and referenda.

2. – JURISDICTIONAL POWERS

a) Electoral and Referenda Litigation

The Constitutional Council oversees the legality of elections.

– *For presidential elections*, it checks the eligibility of candidates, monitors their proposers, ensures that the declaration of estate has been made, establishes a list of candidates, supervises the legality of the electoral operations, examines objections (which can be made by all voters), announces the results of the election, deals with appeals against the decisions of the National Committee on Campaign Accounts and Political Financing and may decide to postpone an election in the case of the death or inability of a candidate to take part.

– *For parliamentary elections*, the Constitutional Council judges ineligibility (either before the election when it acts as the court of appeal concerning the decisions of the administrative courts, or after the election, when it applies, according to the case, an automatic penalty provided for by law or left to its own judgment. It can thus dismiss an M.P.). It checks the legality of the results at the request of voters or candidates. It can thus validate the results, cancel the election or even (although this has never occurred) quash the result and declare another candidate elected.

– *For referenda*, the Council is consulted on the text submitted for referendum as well as on the decrees concerning the organization of the vote. Since 2000, it has taken on the power of checking the preparatory operations. It also oversees the legality of the voting operations and examines objections made to it. It announces the results.

b) Monitoring the Law

Supervision of the respect of the separation between matters for statute and matters for regulation

Article 41 of the Constitution allows the Government and, since the revision of 2008, the President of the relevant assembly, to oppose each Member's bill or each amendment which is not considered to be a matter for statute, on the grounds of admissibility. In the case of disagreement between the president of the assembly concerned and the Government, it is the duty of the

Constitutional Council, to which the matter has been referred by one or the other, to pass judgement within an eight-day time limit.

Similarly, article 37, paragraph 2 of the Constitution provides the Constitutional Council with the power of reviewing, *a posteriori*, the respect of the area of matters for statute by granting it the right to declare the regulatory nature of legislative bills and thus enabling them to be amended by decree.

Monitoring of Constitutionality

- The Field of Reference of Monitoring

The monitoring of constitutionality is not limited to the checking of the conformity of the Constitution alone, in the strictest sense. It can be broadened to include what is named the "block of constitutional rules".

In addition to the fundamental law of the Republic, the "block of constitutional rules" notably includes the Preamble to the Constitution. This preamble, by referring to two other texts, the Declaration of the Rights of Man and the Citizen of 1789 and the Preamble to the Constitution of 1946, gives these documents a constitutional value also. Thus the law is submitted to the principles contained in the Declaration of the Rights of Man and the Citizen, to the "*fundamental principles recognized by the laws of the Republic*" and to the "*principles particularly necessary for our times*" in the meaning of the preamble of 1946, as well as to the various principles and objectives of a constitutional value defined by the very jurisprudence of the Constitutional Council itself. The "block of constitutional rules" also includes the Environment Charter annexed to the Constitution since its revision on March 1, 2005.

- Implementation of Monitoring

The monitoring of constitutionality is systematic for institutional acts before their promulgation and for the Rules of Procedure of the parliamentary assemblies. The latter do not thus entirely control their Rules of Procedure and, therefore, have lost one of the essential powers of the parliamentary systems prior to the Fifth Republic.

For ordinary laws, such monitoring is optional and is carried out after referral by the President of the Republic, the President of the Senate, the President of the National Assembly, the Prime Minister or, since the constitutional reform of 1974, by 60 M.P.s or 60 Senators.

The monitoring which the Constitutional Council may carry out since the revision of July 20, 1998 and the Institutional Act of March 19, 1999 concerning the laws of the land passed by the Deliberative Assembly of New Caledonia and which, according to article 77 of the Constitution, are legally binding, is also optional.

In July 2008, article 61-1 was added to the Constitution making provision for the possibility of a referral to the Constitutional Council if, during

proceedings in progress before a court of law, a person involved in the proceedings claims that a statutory provision, by definition already promulgated, infringes the rights and freedoms guaranteed by the Constitution.

- Consequences of the Decisions of the Constitutional Council

In the case of non-conformity, the provision is censured. Several scenarios are then possible:

– The entire law is censured and its promulgation is thus prohibited;

– The law is partially censured; if the Constitutional Council states that the provision in question is not separable from the rest of the law, the law will not be promulgated and will either be dropped or will be newly introduced with the necessary modifications to allow its conformity to the Constitution. If however, the Constitutional Council considers the provision separable, the President of the Republic will promulgate the law without the non-constitutional provision or he will request a reconsideration of the law, in accordance with article 10, paragraph 2 of the Constitution.

The Constitutional Council may also issue a declaration of constitutionality but attach "reservations of interpretation". Such reservations will direct the interpretation of the law.

The decisions of the Council are binding on the public authorities and all administrative and judicial authorities. There is no appeal against them.

- Monitoring the Compatibility of International Agreements with the Constitution

A referral may be made to the Constitutional Council requiring it to check that international commitments do not contain clauses contrary to the Constitution. Such a referral may be made by the same authorities as may refer matters of scrutiny concerning the constitutionality of laws, including sixty Members of the National Assembly or sixty Senators since the constitutional revision of 1992. If a clause contrary to the Constitution is contained in an agreement, then a revision of the Constitution must be enacted before the ratification of the agreement.

3. – OTHER POWERS

The Constitutional Council, upon referral by the Government, can certify the inability of the President of the Republic to carry out his office.

It is the judge of parliamentary incompatibility and is the only body which may, upon the request of either assembly or the Minister of Justice, certify the removal of a parliamentarian.

IV. – PROCEDURE AND INTERNAL ORGANIZATION

1. – PROCEDURE

The Constitutional Council is not situated at the summit of a hierarchy of judicial or administrative courts. In that sense it is not a Supreme Court. It is an institution whose sittings follow the rhythm of the requests which are referred to it.

It only sits and passes judgement in plenary sitting. Its deliberations are subject to a quorum and the actual presence of seven councillors is required. In the event of a tie in the voting, the President has the casting vote.

In matters of constitutional monitoring, the Constitutional Council passes a judgement after the reading of the report of one of its members. The procedure is written and carried out in the presence of the parties involved.

When a referral is made concerning a priority preliminary ruling on the issue of constitutionality, the Constitutional Council may receive the observations of the President of the Republic, of the Prime Minister and of the presidents of the National Assembly and of the Senate. The parties present their observations in each other's presence. The hearing is public except in exceptional cases.

In electoral litigation, the examination of the case is entrusted to one of the three sections composed of three members chosen by lot, each of whom must have been appointed by a different authority. Decisions are taken in plenary sitting. Hearings with the parties involved or their council occur more and more often.

The Constitutional Council passes "decisions", except when carrying out its consultative role or its role concerning preliminary instruments for elections. In accordance with article 62 of the Constitution, there is no appeal against such decisions and they are binding on all administrative authorities and on all courts. With the exception of those decisions dealing with electoral litigation and those concerning priority preliminary rulings on the issue of constitutionality, such decisions must be handed down in the same month as the referral (this period may be reduced by the Government to eight days in urgent cases). They are published in the *Journal officiel.*

None of the debates in plenary sitting nor the votes are public or published. Dissenting opinions are thus not disclosed. They can only be made public at the end of the time limit protecting the secrecy of the deliberations of the Constitutional Council, currently 25 years. However, the decision, the referral and any observations made by the Government are published the same day on the internet site of the Constitutional Council and, in the case of the first three documents, in the *Journal officiel* within one week.

The procedure which will be implemented in cases of preliminary rulings on the issue of constitutionality has yet to be decided. The parties should be able to present their observations in each other's presence. The hearing will be public.

2. – INTERNAL ORGANIZATION

The departments of the Constitutional Council (Legal Department, Clerk's Office, Administrative and Financial Department, Documentation, Library and Internet Department and External Relations Department) are headed by a Secretary General who is appointed by decree of the President of the Republic upon a proposal of the President of the Constitutional Council. The Secretary General coordinates the work of the Constitutional Council.

The Constitutional Council enjoys financial autonomy and this guarantees the separation of powers. Its President sets its budget which is included in the annual finance bill.

File n°7

The *Conseil d'État* (Council of State)

Key points

The *Conseil d'État* is the supreme administrative court in France. It passes rescinding rulings concerning judgements made by the administrative appeal courts and also has the power to judge certain disputes in the first and last instance such as applications for judicial review of administrative action brought against decrees.

The *Conseil d'État* also plays the role of adviser to the Government. In accordance with article 39 of the 1958 Constitution, bills are referred to it before they go to the Council of Ministers. It is also consulted on draft ordinances, as is stated in article 38 of the Constitution as well as on the most important decrees, referred to as "decrees in *Conseil d'État*". The Government may refer any other matter for regulation or any specific legal question to the *Conseil d'État* for opinion.

Since the constitutional revision of July 23, 2008, a referral for opinion may be made to the *Conseil d'État* by the President of the National Assembly or the President of the Senate concerning a Member's bill tabled in either of the two parliamentary assemblies before its consideration in committee. In addition, it also plays an important filtering role in the procedure concerning the priority, preliminary ruling on the issue of constitutionality.

☞ *See also file 33*

The *Conseil d'État* is, *de jure*, presided over by the Prime Minister, although in practice, it is run by its Vice-President. It is the heir to a very old tradition and has a double role: it is an administrative body which advises the Government and is also the supreme administrative court. The *Conseil d'État* is made up of three hundred members (councillors of state, masters of petitions and auditors) two thirds of whom practice at the *Conseil d'État* itself, whilst the other third is essentially composed of members with high-ranking positions in other administrations.

I. – THE *CONSEIL D'ÉTAT*, HEIR TO AN OLD TRADITION

The origin of the *Conseil d'État* is ancient. This institution can be seen as one of the heirs of the *Curia Regis* which was made up of important people close

to the King and helped him govern his kingdom in the Middle Ages. As time passed, the *Curia Regis*, divided itself up into several bodies such as the Chamber of Accounts or the Parliament. One of these, the Council of the King, preceded what was then to become the *Conseil d'État*. The name itself was first used in 1578 under the reign of Henri III.

It was under the reign of Louis XIV that the ancestor of the present *Conseil d'État* clearly appeared. It was called the "Private *Conseil d'État*" and was in charge of internal administrative questions and litigation.

The legal advisers and the state councillors have existed since the 13th century. The former reported to the *Conseil d'État* on administrative and legal matters whilst the latter deliberated with the King.

However, it was only during the French Revolution that the *Conseil d'État* was to take on its present-day appearance. In 1790, the Constituant Assembly decided that the administration should no longer be submitted to the judiciary. Cases involving public authorities have, since then, been examined by special courts. It was, strictly speaking, the Consulate which, with article 52 of the Constitution of 22 Frimaire, Year VIII (December 13, 1799) created the *Conseil d'État*. It has a double role; as an administrative body, the *Conseil d'État* takes part in the drawing-up of the most important legal documents and as a court, it judges disputes in which the administration is a party.

It was the Law of May 24, 1872 which finally provided the *Conseil d'État* with the structure it still possesses today. It was also at this time that the high courts set down the main principles of French administrative law, thus leading to the construction of the state governed by the rule of law.

Since that time, the *Conseil d'État* has continued to assert itself as the guarantor of freedom and of the legal functioning of the administration, thus reconciling in the best way possible the interests of the State and those of the citizens. Decree no. 2008-225 of March 6, 2008, concerning the organization and the running of the *Conseil d'État*, has rounded off this process and asserts this role by creating a strict separation between the advisory remit and the jurisdictional competence of the *Conseil d'État*.

On the one hand the decree establishes the principle according to which "the members of the Conseil d'État cannot take part in the judgement of appeals against instruments enacted after an opinion of the Conseil d'État if they themselves have been involved in the deliberation of that opinion". Litigants can check the compliance with this obligation by obtaining a list of the members of the advisory sections who took part in the opinion given on the instrument they are challenging. On the other hand, the representatives of the administrative sections may not sit in the ordinary section of nine members, the combined sub-sections or the litigation section when it sits in judgement. Lastly, the number of members of the Litigation Assembly is increased to 17 members (a clear majority of whom belong to the litigation section) and the President of the administrative

section which was called upon to deliberate does not sit on this assembly even if he was not present the day the matter was examined by his administrative section.

In addition, apart from changing the title of Government commissioner to public *rapporteur*, the Decree of January 7, 2009 also allows the parties to the proceedings to be informed of the conclusions of the public *rapporteur* on their case and to reply through short oral observations before the councillors retire to deliberate. The decree establishes the principle that the decision is deliberated in the absence of the parties and of the public *rapporteur*.

II. – ADVISER TO THE GOVERNMENT

The *Conseil d'État* plays a role of adviser to the government by examining all draft bills (as laid down in article 39 of the Constitution) and all draft ordinances (article 38 of the Constitution) before they are submitted to the Council of Ministers. It is also consulted on the most important draft decrees, called "decrees in *Conseil d'État*". It gives its opinion based on the legality of the texts, their form and their appropriateness, from an administrative and not a political point of view.

The *Conseil d'État* may also be consulted by the Government on any question of a legal or administrative nature. This was recently the case in January 2010 when the Prime Minister made a referral to the supreme administrative court concerning the legal possibility of banning the wearing of the full veil in public places. When a matter is referred to the *Conseil d'État* for advice, it is sent to one of its five administrative sections: home affairs, finance, social affairs, public works, and administration (the latter was set up by the Decree of March 6, 2008).

The Home Affairs Section deals with matters concerning the Prime Minister and the Home Office, the Ministers of Justice, National Education, Higher Education and Research, Culture and Communication, Relations with the Parliament, Youth, Sport and Overseas Territorial Units.

The Finance Section is consulted on matters concerning the Ministers of the Economy and Finance, Foreign Affairs and Cooperation.

The Public Works Sections has responsibility for matters concerning the Ministers of Agriculture, Fishing, Equipment, Transport, Housing, Tourism, Industry and Post and Telecommunications.

The Social Affairs Section is in charge of questions concerning the Ministers of Employment, Solidarity, Health and War Veterans.

The Administration Section examines bills and decrees dealing with all matters relating to the Civil Service as well as questions concerning the relations between administrations and users, state reform and public services, non-litigious

administrative procedures, national defence (except for matters concerning veterans, war victims and pensions), public procurement and public properties.

For the most important questions (e.g. draft bills or ordinances), the General Assembly of the *Conseil d'État* makes a decision after the relevant section has given its judgement. Nonetheless, in urgent cases and upon a decision by the Prime Minister, a matter may be referred directly to the Standing Committee of the *Conseil d'État*, without prior examination in a section. This standing committee is much smaller than the General Assembly. Since the publication of the Decree of March 6, 2008, each president of an administrative section can decide to entrust the least complicated cases to a so-called 'ordinary' sitting (in contrast to the plenary sitting), the make-up of which he decides upon.

Furthermore, the *Conseil d'État* expressed a desire to involve people in the proceedings of its various advisory departments who would be liable to bring something to its reflection on account of their knowledge or experience.

In addition, the *Conseil d'État* addresses a public report each year to the President of the Republic. This report gives a full account of the activities of the administrative courts and may contain proposals for reforms which are meant to improve the organization or the working of administration, of the laws or regulations in force. The Report and Studies Section prepares this annual report along with other studies. It is also involved in the implementation of the decisions taken by administrative courts.

III. – ADVISER TO PARLIAMENT

Since the constitutional revision of July 23, 2008, a referral for opinion may also be made to the *Conseil d'État* by the President of the National Assembly or the President of the Senate concerning any Member's bill tabled in either of the two assemblies before its consideration in committee. The author of the Member's bill may make observations and even take part, in a consultative role, in the sitting during which the relevant section deliberates on the opinion which the *Conseil d'État* will give. He is informed of the opinion provided by the *Conseil d'État.*

Between the coming into effect of this provision and the end of the XIIIth term of Parliament, the *Conseil d'État* provided seven opinions on Members' bills transmitted by the President of the National Assembly.

The Members' bills which are referred for opinion to the Conseil d'État are considered by the relevant section or by an *ad-hoc* committee made up of representatives of the various sections concerned by the object of the Member's bill. They are then submitted to the General Assembly of the *Conseil d'État.*

IV. – THE HIGHEST COURT OF THE ADMINISTRATIVE COURT SYSTEM

The *Conseil d'État* is the highest level of the administrative court system and it judges the disputes between individuals and administration in the widest sense of the word (State, local authorities, public bodies, and private persons in charge of public services such as professional bodies or sporting federations).

Thus it passes rescinding rulings concerning judgments made by the administrative appeal courts and specialized administrative courts such as the Refugee Appeal Commission. In addition, it also judges in the first and last instance appeals brought against decrees or the actions of collegial bodies with a national remit (e.g. the jury of a national competitive examination or a body such as the High Council on Audiovisual Matters) as well as electoral disputes concerning regional elections and elections of French representatives to the European Parliament. It has an appeal remit for matters concerning municipal and cantonal election litigation.

Like the Court of Cassation in the ordinary court system, the *Conseil d'État* ensures the unity of jurisprudence at a national level. The judgements made by the *Conseil d'État* in the field of litigation are supreme and are not liable to appeal except in an application to reopen proceedings or in the rectification of a material error.

The Litigation Section plays this jurisdictional role. It is made up of ten sub-sections each specialized in different types of litigation (foreigners' rights, public tenders, taxation etc.).

Since 1990, the *Conseil d'État* has also been responsible for the running of administrative courts and administrative appeal courts. Previously this matter fell within the remit of the Home Office. The *Conseil d'État* is also in charge of running the body controlling administrative judges and it is helped in this task by an independent consultative body which was set up in 1986, called the High Council of Administrative Courts and Administrative Appeal Courts.

V. – AN INCREASED ROLE IN THE PROTECTION OF THE RIGHTS AND LIBERTIES GRANTED BY THE CONSTITUTION

In accordance with the new article 61-1 of the Constitution introduced by the constitutional revision of July 21, 2008, every citizen appearing before an administrative court may challenge, during proceedings in progress before that court, the application of a statutory provision which he considers to infringe the rights and freedoms guaranteed by the Constitution.

The implementation of this procedure, which could lead to a suspension in the delivery of all or some of the points of the substantive decision, provides the *Conseil d'État* with the responsibility of making a judgment on the need to transmit to the Constitutional Council the issue of constitutionality raised before the court under its authority, including for the first time appeals and final appeals,

as the judge in the first and last instance. The *Conseil d'État* must do this within a period of three months.

When a priority, preliminary ruling on the issue of constitutionality is submitted to it, the *Conseil d'État* must ensure, before transmitting it to the Constitutional Council, that the statutory provision which is being challenged is covered by litigation or by the procedure or that it constitutes the basis for proceedings, that the statutory provision has not already been declared in conformity with the Constitution by the Constitutional Council in the motives and the context of its decision, excepting changes in circumstances, and finally that the question raised is new and of a serious nature.

File n°8

The Judicial Authority: The Ordinary Court System and the Court of Cassation (Final Court of Appeal)

Key Points

The independence of the judiciary is a basic condition of a state truly governed by the rule of law. In France such independence is laid down in the Constitution which entrusts the President of the Republic with being its guarantor. A High Council of the Judiciary assists him in the exercise of this task and is the monitoring body with power over appointments and discipline. Its prerogatives are more significant concerning the judges of the ordinary courts, whose irremovability is constitutional, than the public prosecutors who come under the responsibility of the Minister of Justice.

The organization of the French judiciary is characterized by its pyramidal nature and its strict separation between the ordinary court system and the administrative court system. Within the ordinary court system civil matters are, in certain cases, heard in first instance by specialized courts and regional courts (*tribunal d'instance* or *tribunal de grande instance*) whilst criminal matters, which have an inquisitorial type procedure, are heard by distinct criminal courts according to the seriousness of the crimes.

At the top of the ordinary court pyramid stands the Court of Cassation. It is the judge of judges' decisions and may also give its opinion upon the request of other courts of law, contribute to the drawing-up of jurisprudence and is the guarantor of the application of the law by the courts.

☞ *See also file 2*

The French concept of the separation of powers makes the ordinary court system a real authority, distinct from both the legislative power and the executive power. The courts, which decide in the case of disputes by applying the law, are in this way one of the essential guarantees of the existence of a state governed by the rule of law.

The judicial authority was set up by title VIII of the 1958 Constitution. This title establishes the President of the Republic as guarantor of its independence and makes provision for the irremovability of judges of the ordinary courts

(article 64). In addition, the Constitution sets up the judicial authority as the guardian of individual liberty (article 66).

The ordinary court system has 8,355 judges, of whom 6,300 are ordinary court judges and 2,055 are public prosecutors, helped by almost 9,900 clerks of the court. Although it is independent, the judiciary still comes under a form of scrutiny. The French judicial organization is structured in a hierarchy and very often guarantees a double degree of jurisdiction. The Court of Cassation is the highest court in the French system of ordinary courts and it ensures the unity of this system and its jurisprudence.

I. – AN INDEPENDENT JUDICIARY UNDER SCRUTINY

Under the *Ancien Regime*, judicial office was a venal and transmittable position. After a passing phase during the revolutionary period when judges were elected, the Constitution of year VIII (1799) marked the move to a judiciary made up of publicly appointed officials.

Despite the principle of irremovability, the main political crises of the 19th century saw waves of purges.

Judges are, like all French civil servants, recruited by competitive examination. They are trained in a specialized school called the National School for the Judiciary.

The irremovability of ordinary court judges is now enshrined in the Constitution. The Constitutional Council is very strict in its application of the principle of irremovability during its monitoring of the institutional acts concerning the status of judges – not only does this principle prohibit a judge being removed or suspended but also prohibits him being moved from one court to another without his agreement. Thus the judicial authority has a constitutional status which has been well established and which guarantees its independence.

However, the public prosecutors, who constitute the public ministry and who are thus responsible for defending the interests of society and implementing the decisions of justice, come under the authority of the Minister of Justice who may give them instructions in order to implement the Government's criminal law policy.

The separation between the ordinary court judges (the bench) and the public prosecutors (State Counsel's Office) is nonetheless not impenetrable, as judges may move from one to the other, even several times during their careers.

So that such independence would not lead to irresponsibility, a monitoring body for the judiciary was set up by the Constitution of 1946. This body is the High Council of the Judiciary. The Constitutional Act of July 23, 2008 changed its make-up and powers such as they were set out in article 65 of the 1958 Constitution. The Institutional Act of July 22, 2010 detailed the make-up and the operation of the High Council of the Judiciary as well as laying down the code of

ethics which is binding on its members. So as to guarantee the independence of the institution and to open it up, the constitutional revision first of all brought an end to the fact that the Council was presided over by the President of the Republic and that its Vice-President was the Minister of Justice. The presidency of each of these sections[1] is now held by the Chief President of the Court of Cassation and the Chief Public Prosecutor to this court.

The two sections of the High Council of the Judiciary are each entrusted with both making proposals or giving their opinion regarding the appointment of judges for ordinary courts for one of them and for the public prosecutors' office for the other, as well as carrying out a disciplinary role concerning both of these. The make-up of the two sections has been changed. The first, which has five ordinary court judges and one public prosecutor, is empowered to deal with ordinary court judges; the second, which has five public prosecutors and one ordinary court judge, is empowered to deal with public prosecutors. The other members of the High Council of the Judiciary belong to each of the two groups; they are, one state councillor, one practising lawyer and six prominent citizens, not belonging to the Parliament, the ordinary court system or the administrative court system, appointed respectively by the President of the Republic, the President of the National Assembly and the President of the Senate. Thus, within the Council, a majority representation for prominent citizens from outside the judiciary is ensured, except for disciplinary matters in which case the Council is made up of an equal number of judges and of members not belonging to the judiciary. The plenary structure which is in particular in charge of replying to the requests for advice made by the President of the Republic in accordance with article 64 of the Constitution and of making decisions on questions concerning the ethics of judges, is made up of a balanced representation of the various levels of the judicial hierarchy.

The new wording of article 65 of the Constitution also provides the possibility for a request to be made to the High Council of the Judiciary by a person awaiting trial for disciplinary action to be taken concerning a judge. The Institutional Act of July 22, 2010 sets out the details of the examination procedure of the High Council concerning such requests.

II. – A HIERARCHICAL JUDICIAL ORGANIZATION

The present organization of the French judiciary stems, in its general make-up, from the revolutionary period. Its principles are a hierarchical structure (with several levels of courts), the elimination of most courts of limited jurisdiction and the separation of the ordinary court system from the administrative court system.

1. One section concerns ordinary court judges and the other concerns public prosecutors.

The two levels of civil courts are those of first instance and of appeal. In the case of first instance, the competent court is, according to the importance of the action, the *tribunal d'instance* (magistrate's court) or the *tribunal de grande instance* (regional court). Some cases may however be heard by specialized courts partly made up of non-professional judges. These courts include commercial and bankruptcy courts for commercial law matters, industrial arbitration courts for labour law affairs, agricultural land tribunals for rural law questions, social security appeal tribunals to deal with social security law issues etc. Until 1958, stipendiary magistrates were responsible for hearing petty disputes. The setting-up in 2002 of local courts was a reflection of the desire to re-establish a community-based level of courts to deal with certain petty disputes both in civil and criminal matters.

The judgements of courts of first instance are given, according to the seriousness of the dispute, either with or without recourse to appeal. In the former case they can be appealed before a court of appeal.

In criminal matters there are three types of court: police courts which deal with petty offences punishable by fines, criminal magistrate's court which handles indictable offences and the court of Assizes which judges serious offences. The jurisdiction of one of these courts is thus determined by the gravity of the offence to be judged and by the legal consequences it entails (for petty offences the penalty is a simple fine, for indictable offences it is a fine plus up to ten years imprisonment and for serious offences it is a fine and a prison sentence which can be as much as life, possibly combined with a period of security during which the inmate will not be released under any circumstances even if he has reductions for good behaviour). Appeals against judgements handed down by police courts and criminal magistrates' courts are heard before a court of appeal, as for civil matters.

The judgements of courts of Assizes can be appealed before another court of Assizes in accordance with the Law of June 15, 2000. In addition to three judges, the court of Assizes of first instance is made up of nine jurors (citizens of more than 23 years old, drawn by lots from the electoral register) and the appeal court of Assizes is made up of twelve jurors.

The Law of August 10, 2011 on the participation of citizens in the carrying-out of criminal justice and the judgement of minors introduced the notion of "citizen assessors" into the criminal magistrates' courts and the criminal magistrates' appeal courts. From now on, in cases concerning persons accused of violent theft, sexual assault or destruction or criminal damage to property implying danger to others, two citizens whose names have been drawn at random from the electoral register will sit along with the three magistrates in such courts.

French criminal law procedure is based on the inquisitorial system. This explains the position of the examining magistrate whose responsibility it is to examine the most serious offences and most complex matters taking into account

all incriminating and exonerating evidence. The public prosecutors may, under the authority of the Minister of Justice, carry out a true criminal law policy since they have the power of discretionary prosecution and this enables them to close a matter or, on the contrary, prosecute.

So as to ensure not only the equality of the citizens before the law but also the equality of access to justice, legal aid can be provided to those who do not possess sufficient resources, in order to obtain the free help of a lawyer during proceedings.

Decisions on merits made by the courts have the status of *res judicata*.

It should also be noted that the ordinary court authority has no jurisdiction concerning administrative disputes which are dealt with by courts of the administrative authority. This separation, which is justified by the principle that the only legitimate judge of the administration is the administration itself, can sometimes lead to conflict of jurisdiction. This can be either because each of the authorities sends the ruling of a dispute to the other (negative conflict of jurisdiction) or because the ordinary court judge considers his court to have jurisdiction whilst the administration believes it is competent (positive conflict of jurisdiction). In order to avoid such conflicts of jurisdiction, a Jurisdictional Disputes Tribunal, presided over by the Minister of Justice and made up of four representatives of the ordinary court authority and four representatives of the administrative court authority, is responsible for passing a ruling. In addition, since 1960, the highest courts of the two legal authorities may refer matters of high complexity which call into question the separation of the administrative and ordinary court authorities for resolution to the Jurisdictional Disputes Tribunal.

III. – THE COURT OF CASSATION, THE HIGHEST COURT IN THE FRENCH ORDINARY COURT SYSTEM

Decisions handed down in last instance by courts of the first degree and decisions of the appeal courts can be appealed before the Court of Cassation. Such a final appeal must be for a very serious reason relating to the application of the rule of law by the court concerned. In addition, with the exception of criminal cases and litigation in professional elections, the aid of an "*avocat aux Conseils*" or "accredited lawyer" (member of the legal profession with a practice who alone can represent parties before the Court of Cassation, the *Conseil d'État*, and the Jurisdictional Disputes Tribunal), is obligatory.

The Court of Cassation does not judge the substance of the cases but solely the decisions of the judges in law. This is why, more often than not, if the Court of Cassation quashes the contested decision, it will send the matter back to a lower court for a decision on the merits. Rescinding without appeal takes place when the decision which is quashed does not involve a new decision on the merits or when the evidence heard and assessed by the original judge enables the application of the appropriate rule of law.

The Court of Cassation is made up of six divisions each of which is specialized in particular types of dispute. There are three civil divisions, one commercial, one social and one criminal.

In the Court of Cassation, the State Counsel's Office is represented by a Chief Public Prosecutor and counsels for the prosecution. In each case, both civil and criminal, the State Counsel's Office provides an opinion so as to inform the judges of the Bench.

Cases are heard by a body of judges (in plenary, branch or smaller unit) from one of the six divisions. When a case raises an important question of principle, when it leads to differences of opinion between the divisions of the Court or when a vote is equally divided between the judges, two other bodies of judges are possible: a Mixed Division (made up of members of, at least, three different divisions) or the Plenary Assembly (the most formal body which includes the presidents as well as the members of all six divisions). When a decision which has already been quashed in the Court of Cassation is handed down by a judge in a lower court and is brought again before the Court of Cassation, the latter must sit in Plenary Assembly. In addition, every court of appeal is obliged to apply decisions handed down by the Plenary Assembly.

Since 1991, the Court of Cassation may also be led to provide its opinion, upon the request of the lower courts, in both civil and criminal matters, on new questions of law of great complexity raised in numerous disputes. The opinion given by the Court of Cassation is not binding on the lower courts but is communicated to the parties involved.

During the revolutionary period, judges had to limit themselves to the application of the law or in the case of there being no applicable law, to addressing lawmakers through legislative appeal. The abolition of this procedure in 1804 has provided judges with the power to interpret the law. Through its judgements and through its 'opinions', the Court of Cassation ensures unity of interpretation and the symbolic unity of the French ordinary court system. By sometimes basing its judgements on pre-established written principles, the Court of Cassation is a vector for the role played by jurisprudence in the "creation" of laws.

Article 61-1 of the Constitution, adopted through the constitutional revision of July 21, 2008, introduced into French law the notion of the priority, preliminary ruling on the issue of constitutionality.

When during proceedings in progress before a court, it is considered that the application of a statutory provision infringes the rights and freedoms guaranteed by the Constitution, a referral may be made to the Constitutional Council by the *Conseil d'État* or by the Court of Cassation. The Constitutional Council must render its ruling on the admissibility of the request within three months.

File n°9

The Court of Accounts

Key Points

The Court of Accounts is the body responsible for monitoring the legality of public accounts and checking the correct use of public funds.

In accordance with article 47-2 of the Constitution, the Court of Accounts "shall assist Parliament in monitoring Government action"; it "shall assist Parliament and the Government in monitoring the implementation of Finance Acts and Social Security Financing Acts as well as in assessing public policies". Collaboration between the Court of Accounts and Parliament takes various forms. This is particularly displayed by means of the special transmission of the work of the Court of Accounts to the National Assembly and to the Senate and by the attendance of the Court at various parliamentary bodies (Finance Committees, Assessment and Monitoring Missions and Assessment and Monitoring Missions for the Laws Governing Social Security.

☞ *See also files 48, 49 and 50*

The Court of Accounts was set up in 1807 and has gradually seen its role broaden with the extension of the powers of both the State and the public sector.

Nowadays it has within its remit, the obligatory monitoring of:

– The State;

– National public establishments;

– Public companies;

– Social security agencies.

In all these cases, referral to the Court of Accounts is a matter of law and is thus automatic.

It also has within its remit, the optional monitoring of:

– Agencies in private law with a majority of votes or capital held by bodies submitted to obligatory monitoring by the Court of Accounts or in which such bodies have a dominating decision-making or managerial role;

– Agencies in private law (particularly associations) supported by public funding;

- Bodies of ‘general interest’ funded by donations from the general public;
- Bodies supported by European Union funding;
- Bodies entitled to grants of any type and to impose legally obligatory fees.

I. – THE MONITORING OF LEGALITY: THE COURT OF ACCOUNTS AS THE JUDGE OF THE ACCOUNTS OF STATE PUBLIC ACCOUNTANTS

Articles L. 111-1 and L. 111-3 of the Code of Financial Jurisdictions state that “the Court of Accounts judges the accounts of public accountants” and that it “checks, using all available evidence, the correctness of the expenditure described in public accounts”.

The Court of Accounts is thus responsible for checking that the tax revenue has been collected and that expenditure has been engaged in accordance with the accountancy rules in force. It analyses the accounts and the accompanying supporting documents and examines the balance of the accounts. It releases the accountant from responsibility if the accounts are correct but declares him with a balance due if tax revenue has been lost or if expenditure has been irregularly carried out. The responsibility of the account is thus both personal and financial.

The Court of Accounts does not only judge the accounts of public accountants but also those of every person who has been involved in an irregular manner with the handling of public funds; the *de facto* accountant, so declared beforehand by the Court of Accounts, is then submitted to the same requirements and to the same responsibilities as a public accountant.

II. – THE MONITORING OF MANAGEMENT: THE COURT OF ACCOUNTS AND THE CORRECT USE OF PUBLIC FUNDS

The Court of Accounts does not judge the officials empowered to authorize expenditure but checks the correct use of public funds (according to L.111-3 of the Code of Financial Jurisdictions, it “checks the correct use of credits, funds and assets managed by state bodies”), either when it examines the accounts of state accountants and public bodies or when it directly verifies the management of officials empowered to authorize expenditure.

In 1976, the Court of Accounts also received the responsibility previously held by the Public Companies’ Accounts Verification Committee which, since 1948, had been monitoring public companies and was then a body attached to the Court of Accounts. The Court of Accounts expresses its opinion on the correctness and the legality of such accounts and proposes improvements, if necessary. It also provides an opinion on the quality of management of such companies.

Since 1950, the remit of the Court of Accounts also includes the monitoring of social security agencies. Almost all such agencies are private law legal entities whose resources are contributions of an obligatory nature. At a local level the accounts of social security offices are often checked by the departmental committees for account verification (CODEC) under the supervision of the Court of Accounts.

In addition, state aid to a private body may take the form of a grant. It is within the remit of the Court of Accounts to check the use of such public aid and since 1991, this remit has been extended to include agencies requesting donations from the general public. The Court makes an assessment of the conformity of the expenditure of such agencies with the objectives set down in the call for public donations.

In the case of clear irregularities in the management of the officials empowered to authorize expenditure, working for one of these agencies or for a state body, the Court of Accounts may refer the matter to the Court of Budgetary and Financial Discipline (CDBF).

III. – ASSISTANCE TO PARLIAMENT AND GOVERNMENT

Article 47-2 of the Constitution, in the wording of the Constitutional Act of July 23, 2008, provides that the Court of Accounts:

- Shall assist Parliament in monitoring Government action;
- Shall assist Parliament and the Government in monitoring the implementation of Finance Acts and Social Security Financing Acts, as well in assessing public policies;
- Shall contribute to the information of the citizens by means of its public reports.

In the wording of the Constitutional Act of July 23, 2008, the reference to assessment seems to complete an evolution which has led the assemblies, as well as the Court, to introduce a new dimension into their work: the evaluation of results and of the efficiency of public policies.

The Court's assistance to Parliament by the Court of Accounts consists, first of all, in the transmission of numerous documents, only a limited number of which are public.

Parliament receives, of course, the public reports of the Court of Accounts:

- The annual report to the President of the Republic is, in accordance with article L-136-1 of the Code of Financial Jurisdictions, "presented to Parliament". This presentation takes the form of a formal tabling of the report by the First President of the Court of Accounts in the Chamber of each of the assemblies. The Law of July 12, 2005 provides that this report may give rise to a debate both in the National Assembly and in the

Senate (article 11 modifying the Institutional Act of August 1, 2001 concerning finance acts);

– Thematic or specific public reports which are the result of inquiries by the Court of Accounts sometimes jointly with the regional chambers of accounts.

Parliament also receives documents which are not public: specific reports on the management and accounts of public companies, the “references” of the Court of Accounts (observations made to ministers and signed by the First President), etc.

This information provided by the Court to Parliament was increased in 2008 by a provision stating that the First President should communicate to the finance committees, to the social affairs committees and to the commissions of inquiry of the assemblies, upon their request, the definitive findings and observations of the Court which are not required to be transmitted.

Article 58 of the Institutional Act of August 1, 2001 concerning finance laws modified and clarified the assistance mandate of the Court of Accounts to Parliament as regards the monitoring of finance acts and more generally public finances.

It is stated that the assistance mandate given to the Court of Accounts now includes the tabling of several reports:

– A preliminary report linked to the tabling of the Government report on national economic development and on policies for public finances that the Government must present in the last quarter of the ordinary session with a view to the debate on budgetary policy (article 48 of the Institutional Act of August 1, 2001);

– A report on the implementation of the finance acts, the content of which is broadened to include all associated accounts and which must include an analysis per assignment and per programme of the use of the budgetary credits;

– A report linked to the tabling of each finance bill on the movements of credits through administrative channels, which must be ratified in the said finance bill (in practice this represents decrees authorizing advances).

In addition, the Court of Accounts must certify the legality, correctness and accuracy of the state accounts.

It must also reply to the requests for assistance made by the Chairman and the General *Rapporteur* of the finance committees of each of the two assemblies in the carrying out of their assessment and monitoring mission.

In addition, the Court of Accounts is also obliged to reply, within a time limit of eight months, to any inquiry made by a finance committee concerning the management of agencies or bodies which it monitors.

The Court of Accounts provides similar assistance in the area of the monitoring of laws on the financing of social security. Every year it draws up a report on their implementation which it tables before Parliament. It may also be referred to by the relevant parliamentary standing committees on any question dealing with the implementation of the social security financing acts and may carry out inquiries upon their request on bodies which it monitors (article 2 of the Institutional Act of July 22, 1996).

The Court of Accounts may also attend the meetings of the Assessment and Monitoring Mission (MEC) set up in 1999 by the Finance Committee of the National Assembly and those of the Assessment and Monitoring Mission for the Laws Governing Social Security (MECSS) established in 2005.

File n°10

The Economic, Social and Environmental Council

Key Points

The Economic, Social and Environmental Council which, in accordance with the Constitutional Act of July 23, 2008, replaces the Economic and Social Council, is a consultative assembly set up by the Constitution within the framework of public authorities.

"Through the representation of the main economic and social activities, the Economic, Social and Environmental Council encourages the interaction of the various professional categories and ensures their involvement in the economic and social policy of the Government. It examines and proposes the economic and social adaptations made necessary, in particular by new technologies" (article 1 of the Institutional Act of December 29, 1958).

The Constitutional revision of July 23, 2008, extended the area of subjects on which the Council could be called to provide an opinion, particularly to environmental questions and to programming laws setting down the multiannual guidelines for public finances.

I. – THE MAKE-UP OF THE ECONOMIC, SOCIAL AND ENVIRONMENTAL COUNCIL AND THE WORKING OF ITS VARIOUS BODIES

Since the constitutional revision of July 23, 2008, the Economic, Social and Environmental Council has a maximum of 233 councillors who are divided into groups according to their socio-professional background.

The Institutional Law of June 28, 2010 modified the make-up of the Economic, Social and Environmental Council. This was done in order to legally implement the setting-up of the environmental pole which had been introduced by the reform of the Constitution as well as to improve the Council's representation of the French nation in terms of changes in the evolution of society since the reform of 1984, especially as regards young people and women.

Members are appointed for a term of five years and may not carry out more than two consecutive terms of office.

The office of member of the Economic, Social and Environmental Council is incompatible with that of M.P., M.E.P., member of the Government or member of the Constitutional Council.

The administrative working of the Economic, Social and Environmental Council is carried out by the general secretariat (149 civil servants).

1. – THE CHAIRMAN

The Chairman is elected by secret ballot for two and a half years by all the members making up the Economic, Social and Environmental Council. He is in charge, along with the *Bureau*, of the correct running of the Council both from an institutional and an administrative point of view. He appoints, upon a proposal of the *Bureau*, the sections which are in charge of drawing-up the reports, studies and draft advice notices. He has authority over the departments and is empowered to authorize expenditure.

2. – THE BUREAU

The *Bureau*, which is the collegial managerial body of the Council, ensures the regular operation of its proceedings. It is made up of eighteen members elected by secret ballot, including six vice-presidents, two *questeurs* and four secretaries.

The *questeurs*, along with the Chairman, ensure the preparation and the implementation of the budget.

The *Bureau*, which is convened by the Chairman or upon the request of half of its members, lays down the agenda of the plenary assemblies, examines the Government's requests for opinions or studies, suggests the sections to whom the drawing-up of reports or studies and the preparation of draft opinions should be given as well as decides on their main orientations and the time frame to be imposed. The *Bureau* may also decide upon the setting-up of a temporary committee when several sections are concerned by the same topic.

3. – THE SECTIONS

The nine sections are the ordinary working teams of the Council. They each have between 27 and 30 members who are appointed by the *Bureau* upon a proposal of the groups and they belong, as far as possible, to each the groups. The members of each section elect their section chairman and deputy chairmen.

The Government may call upon a number of figures, chosen on account of their knowledge, to sit as a section for a specific mission and length of time. These figures, eight per section at the most, are tasked with using their expertise to further enlighten the work of the sections. They, like the ordinary council members, take part in the proceedings of the section to which they are co-opted, may vote on the draft studies and may even fulfil the role of *rapporteur*. They may not vote on the draft opinions as this is solely within the remit of the ordinary members of the Council.

The sections are tasked with the drawing-up of studies and draft opinions on topics within its field of competence which is determined by decree. They

meet one half-day per week. These meetings are held *in camera* so as to maintain the free nature of the discussions which take place.

4. – PLENARY ASSEMBLY

The plenary assembly is convened twice a month and brings together the 233 members of the Council who vote on the opinions put forward by the sections. The agenda is drawn up by the *Bureau*. Ministers, who are informed about opinions which concern them, attend the plenary assembly and participate in the debates.

5. – THE BUDGET

The total budget allotted to the Economic, Social and Environmental Council was €38.7 million in 2012.

II. – THE ROLE OF THE ECONOMIC, SOCIAL AND ENVIRONMENTAL COUNCIL AND ITS RELATIONS WITH THE PARLIAMENT

1. – THE ROLE OF THE ECONOMIC, SOCIAL AND ENVIRONMENTAL COUNCIL

Requests for advice or studies are referred to the Economic, Social and Environmental Council by the Prime Minister on behalf of the Government. It may also make an auto-referral or since the constitutional revision of July 23, 2008, and have matters referred to it by petition in the conditions laid down by the Institutional Law of June 28, 2010. The petition must be presented in the same terms by at least 500,000 people of voting age who have French nationality or who regularly reside in France. It must mention the surname, first name and address of each petitioner and must be signed by him/her.

If the Government declares a question a matter of urgency, then the Economic, Social and Environmental Council has one month to give its opinion. Bills on programmes or plans of an economic or social nature, with the exception of the Finance Bill, must be referred to it for opinion.

The constitutional revision of July 23, 2008 allows the Government nonetheless to consult the Council on draft programming laws which set down the multiannual guidelines for public finances.

Bills, decrees and private members' bills within its field of competence may also, optionally, be referred to it.

2. – THE RELATIONS OF THE ECONOMIC, SOCIAL AND ENVIRONMENTAL COUNCIL WITH PARLIAMENT

In accordance with article 70 of the Constitution, both Parliament and the Government may refer any economic, social or environmental issue to the Economic, Social and Environmental Council and, since the constitutional revision of July 23, 2008, may do the same for an issue of an environmental

nature. The President of the National Assembly made use of this possibility for the first time in September 2009, by referring the question of the taxation of daily allowances for work–related accidents to the Council.

Article 69 of the Constitution provides that one member of the Economic, Social and Environmental Council may be appointed by the Council to present to the parliamentary assemblies, the opinion of the Council on such Government or Members' bills as have been submitted to it. The Chairman of the Economic, Social and Environmental Council gives notice to the President of the assembly in question.

At the appointed hour of his hearing, he is led into the Chamber by the Chief Usher, upon the order of the President who immediately gives him the floor. Once he has finished his presentation, he is led out of the Chamber in similar fashion.

In addition, for its own information, each committee may request, through the offices of the President of the assembly in question, to have the *rapporteur* of the Economic, Social and Environmental Council make a submission before it on the bills on which he was called to give his opinion.

File n° 11

The Territorial Organization of France

Key points

Since the revision of 2003, the Constitution states that the organization of the Republic is decentralized. This thus takes into account the process of decentralization which was initiated at the start of the 1980s.

Accordingly, many powers were transferred to local municipalities, departments and regions but also to communities with a specific status and to overseas communities. At the same time, municipalities are increasingly coming together in public establishments for inter-municipal cooperation so as to pool their resources. As their powers have increased, so have their means regarding both financial and human resources.

This double increase in powers and in resources means that territorial communities have become major public actors in local life and democracy.

☞ *See also file 4*

The constitutional revision of March 28, 2003, introduced into article 1 of the Constitution the notion that the organization of the Republic is decentralized. This new stage in the process of decentralization is part of the extension of several reforms which granted an increased freedom in administration to the different territorial levels. The Law of March 2, 1982, concerning the rights and freedoms of municipalities, departments and regions, represented a crucial step in this process. Since the 1990s inter-municipal cooperation has been stressed. The process of decentralization has also witnessed a growing devolution of state services in the regions and departments. As of 2009 and 2010, these devolved services were radically reorganized within the framework of an overall reform of the state territorial administration.

I. – A BROAD RANGE OF TERRITORIAL COMMUNITIES

Article 72 of the Constitution draws up the list of territorial communities which are: “the Communes (municipalities), the Departments, the Regions, the Special-Status communities and the Overseas Territorial communities to which article 74 applies”.

1. – MUNICIPALITIES, DEPARTMENTS AND REGIONS

In France, there are currently three levels of territorial communities.

The municipalities make up the oldest and the closest to the citizens within the territorial organization of France. There are around 36,000 of them. They replaced the former parishes in 1789. The mayor, who is elected by the municipal council, is both the representative of the State in the municipality (he has powers concerning civil registry as well as administrative policing) and the holder of local executive power (he prepares and implements the decisions of the municipal council).

The departments were also set up in 1789. There are 101 of them of which 96 are in metropolitan France. At the beginning they were areas for state action (with the State being represented by the prefect) and they were only to become territorial communities in 1871. The Departmental Council, which is the departmental deliberative assembly, is renewed by half every three years. Every departmental councillor is elected in a "canton".

The 22 regions are a more recent creation. In the 1960s, they represented simple state entities, areas for regional action which were meant to provide more coherence to state policy at a higher level than the department. The Law of March 2, 1982, provided them with the status of territorial communities but it was only in 1986 that the first election for regional councils by universal suffrage was held.

The Law of December 16, 2010 reforming the territorial communities provides for the creation of the position of territorial councillors who will be elected, as of 2014, to sit both on the departmental council and on the regional council.

These three levels represent both territorial communities and also areas for state action (their representatives are the mayor, the prefect and the regional prefect respectively). Therefore, the organization of devolved state services is based on the same territorial divisions. Within the department there is a sub-division called "*arrondissement*" or district in which the State is represented by a sub-prefect.

2. – SPECIAL-STATUS COMMUNITIES AND OVERSEAS COMMUNITIES

Certain communities possess a specific status both in metropolitan France and in the overseas territories.

In continental France, Paris, Lyon and Marseilles have a special status: these towns are divided into "*arrondissements*" which elect councils and mayors. In addition, Paris has a double status as both a municipality and a department and most police powers there are in the hands of the Prefect of Police, instead of the Mayor. In a similar way, the rules applicable in the *Ile-de-France* region are to some extent exemptions to ordinary law. For historical reasons, certain specific rules are applicable in Alsace and Moselle.

Corsica has a specific institutional organization which grants it greater management autonomy. The Territorial Community of Corsica (CTC) has extended powers in certain areas, in particular that of the protection of cultural heritage.

The overseas departments and regions which are Guadeloupe, Martinique, French Guiana, La Réunion and Mayotte, are subject, by virtue of article 73 of the Constitution, to the notion of legislative assimilation. They have the ordinary law powers of departments and regions but they are also included in international negotiations and have a greater power of proposition. Another particularity of these territories lies in the fact that four overseas regions are superimposed on the four overseas departments. In 2011, Martinique and French Guiana became single communities and thus have the competences at one and the same time of departments and regions. In the same year Mayotte became the fifth overseas department and also has the status of a single community.

However, other overseas communities and New Caledonia are subject to the principle of legislative specificity which is governed by article 74 of the Constitution: an Institutional act defines the status of each community and lists the laws which are applicable there. Local assemblies may draw up regulations which fall within the ambit of statute except for certain matters specified in article 73, paragraph 4 of the Constitution.

3. – THE DEVELOPMENT OF INTER-COMMUNALITY

France is one of the countries in the world which has the largest number of municipalities. In order to avoid the risk of dispersion of local public policies an inter-communal level has been developed. This level allows several municipalities (“communes”) to pool the management of certain public services and the implementation of certain policies. In order to do this, public entities for inter-communal cooperation (EPCI) were set up. These are public entities without being territorial communities. Their creation is the result of a wish expressed by the member municipalities and does not lead to the end of their status as such.

The first generation of EPCIs is made up of inter-municipality groupings which today number around 12,000. There is a distinction drawn between inter-municipality groupings with a single aim (SIVU) which carry out only one joint action (for example refuse collection or road maintenance) and inter-municipality groupings with multiple aims (SIVOM) which may carry out several. These EPCIs do not have their own resources and, therefore, depend on the municipalities for their financing. In addition to this, there is also the case of “mixed groupings” which may bring together municipalities with other public entities. Since the Law of December 16, 2010, the metropolitan “poles” represent a new category of “mixed groupings” bringing together EPCIs controlling their own fiscality.

The second generation of EPCIs fulfils the wish to develop the various types of inter-communal cooperation with the possibility of collecting their own tax: the Single Professional Tax (TPU). As of January 1, 2011, France numbered 16 of these urban communities, 191 agglomeration communities and almost 2,400 municipality communities. In addition, Nice Côte d'Azur became, in 2012, the first "metropole", in the meaning of the Law of December 16, 2010 reforming the territorial communities.

This same law, which was modified on February 29, 2012, implements a process of revision and completion of inter-communality in France.

II. – THE TERRITORIAL COMMUNITIES – MAJOR PUBLIC ACTORS

Territorial communities have become major actors in local life. Their powers have in fact grown in number and this requires increased resources and a special civil service whose numbers have also risen.

1. – THE POWERS OF THE TERRITORIAL COMMUNITIES

Territorial communities are dependent on a general clause concerning their powers subject to the principle of subsidiarity defined in article 72 of the Constitution: "*Territorial communities may take decisions in all matters arising under powers that can best be exercised at their level*".

However in practice, this general competence is carried out through certain powers which have been transferred to them by law. The legislator intended, from the beginning of the process of decentralization, to create homogeneous blocks of powers. Thus municipalities have powers in matters concerning town planning, housing, health, and social or cultural action. The departments have powers in four main fields: social and health action, spatial development and equipment, culture and heritage and economic development. Lastly, regional powers are essentially in the areas of economic development and regional planning. Nonetheless, certain powers are still often shared between the different levels of territorial communities: this is the case, for example, in education (primary education is a matter for municipalities, junior high schools are within the remit of departments whilst high schools fall within the scope of regions). The Law of December 16, 2010, aims, as of 2015, at rationalizing the implementation of the powers of the different levels of the territorial communities.

Territorial communities are also subject to the principle of free administration, which is guaranteed to them by article 72 of the Constitution. This principle applies both to the relations the communities have with the State but also to the links between communities themselves. Thus, no territorial community may have authority over another although this does not prevent, since the constitutional revision of March 28, 2003, the appointment of a "leading"

community, tasked with the action of all the communities in the implementation of one power or another.

The principle of free administration has also put an end to the prior monitoring which prefects carried out on the instruments of territorial communities. Even if the latter must, generally speaking, transmit such instruments to the prefects, the administrative judge alone, if a referral is made to him by the prefect or by a natural person or legal entity concerned by the issue, may rescind them.

2. – THE FINANCES OF THE TERRITORIAL COMMUNITIES

In 2010, the expenditure of local public administrations represented 229 billion euros, of which 42 billion euros was capital expenditure: alone, the territorial communities thus finance more than 70% of public investment. In total, local expenditure represents about 20% of public expenditure, i.e. almost 12% of GDP. The amount of the resources of territorial communities is increasing given the transfer in powers which they enjoy. In order to carry out their missions, local communities have substantial revenue:

– The main one is made up of local rates and taxes, amongst which are housing tax, land tax on constructed properties, land tax on non-constructed properties and the "territorial economic contribution" (which in 2010 replaced the professional tax). In 2009, all this direct local fiscality taken together represented about 110 billion euros;

– Local communities also benefit from State aid which represents about 60 billion euros per annum (not including transferred fiscality and compensation for tax relief). The most sizeable of these transfers is the Overall Operations Transfer (DGF).

3. – THE TERRITORIAL CIVIL SERVICE

The territorial civil service was set up by the Law of January 16, 1984. Since then, its numbers have risen sharply, particularly on account of staff transfer from the centralized state civil service to the various decentralized branches.

In 2009, the territorial civil service numbered more than 1.8 million staff, i.e. around 35% of overall civil service numbers. The municipalities and the EPCIs employ most of these territorial civil servants (more than 1.4 million), followed by the departments (around 300,000) and the regions (with less than 74,000 staff). The Observatory of the Territorial Civil Service, has listed more than 250 different types of job, in eight branches, which correspond to the many powers which have been devolved to the territorial communities.

File n°12

The Defender of Rights

Key Points

The Defender of Rights, who is appointed for a non-renewable term of six years by the President of the Republic after consultation with Parliament, is an independent constitutional authority responsible for safeguarding the protection of rights and freedoms and for promoting equality.

This institution which has been enshrined in the Constitution since the Constitutional Law of July 23, 2008 and which is regulated by the Institutional Law (n°2011-333) and Ordinary Law (n°2011-334) of March 29, 2011, brings together the missions and the powers of the Ombudsman of the Republic, the Defender of Children's Rights, the High Authority to Combat Discrimination and Promote Equality (HALDE) and the National Commission on Security Ethics (CNDS). The Defender of Rights reports on his activities to the President of the Republic and to Parliament.

The budgetary autonomy of the Defender of Rights is ensured according to conditions laid down in a finance law. He has total control over the finances allotted to him and presents his accounts to the National Court of Accounts for verification.

I. – STATUS

The Defender of Rights is an independent constitutional authority. He is appointed by the President of the Republic in accordance with the procedure laid down in the final paragraph of article 13 of the Constitution. This procedure requires an opinion on the matter to be expressed publicly by the relevant standing committee of each assembly and the President of the Republic may not proceed with the appointment when the sum of the negative votes in each committee represents at least three-fifths of the ballots cast within the two committees.

Upon appointment, the term of office of the Defender of Rights may only be interrupted either at his own request or, in the case of incapacity, declared by a body composed of the leading authorities in the three highest French courts.

As an independent authority, the Defender of Rights must receive no interference in the carrying-out of his office and he may not be prosecuted, investigated, arrested, held or judged on account of the opinions he expresses or the acts in which he engages in the accomplishment of his duty.

His duties are incompatible with those of elected office, of another position within the civil service, of a given professional activity and of any managerial position within a company.

II. – SCOPE OF POWERS

The Defender of Rights is responsible for four broad missions corresponding to the institutions which his position gathers together:

- To defend rights and freedoms in dealings with state administrations, territorial authorities, public establishments and bodies with a public service mission;
- To defend and promote the superior interest and rights of the child as laid down by the law or by an international undertaking which has been legally ratified or approved by France;
- To fight against discrimination, whether it be direct or indirect, prohibited by the law or by an international undertaking which has been legally ratified or approved by France, as well as promoting equality;
- To safeguard the respect of a code of ethics by persons carrying out security duties on the territory of the Republic.

Consequently and to maintain coherence, the Ordinary Law of March 29, 2011 repealed the legislative instruments which had set up the position of Ombudsman of the Republic (Law of January 3, 1973), the Defender of Children's Rights (Law of March 6, 2000), the National Commission on Security Ethics (Law of June 6, 2000) and the High Authority to Combat Discrimination and to Promote Equality (Law of December 30, 2004).

III. – REFERRAL

In each of his missions, referral is made directly to the Defender of Rights by the physical or moral person who considers himself wronged or who requests protection.

When the interest of a child is called into question, the persons authorized to make referral to the Defender of Rights are: the child or minor under 18 years old, his legal representative, a member of his family, a medical service, a social service or an association for the defence of children's rights.

In the case of mediation with public services, the referral to the Defender of Rights is preceded by preliminary discussions with the civil servants or public bodies which have been called into question.

In all cases, the referral is free of charge. The Defender of Rights may make an auto-referral or the referral may be made by the right-holders of the person whose rights or freedoms are at issue.

The referral may be made by electronic means, by ordinary mail or through the intermediary of one of the delegates of the Defender of Rights working in the *préfectures, sub-préfectures* or in the local justice and rights office.

The referral to the Defender of Rights may be made via one of his deputies.

A complaint may be lodged with an M.P., with a Senator or with a French M.E.P. who will transmit it to the Defender of Rights if he feels that it requires his attention. The Defender of Rights will inform the M.P., the Senator or the French M.E.P. of the action taken pursuant to the aforementioned transmission.

Upon the request of one of the standing committees of his assembly, the President of the National Assembly or the President of the Senate may transmit to the Defender of Rights any petition which has been presented to his assembly and which falls within the remit of the Defender of Rights.

The Defender of Rights also deals with complaints which are addressed to him by the European Ombudsman or by a foreign counterpart and which appear to him to fall within his remit and call for his attention.

Referral to the Defender of Rights neither interrupts nor suspends, in itself, the normal prescription period regarding civil, administrative or criminal actions. This is also the case as regards administrative appeals or litigation.

IV. – OPERATION AND MEANS

In each of his missions, except in that concerning mediation with a public service, the Defender of Rights is assisted by a college which is composed of qualified figures in the particular area, and of a deputy who is the Vice President of the college which corresponds to his specific expertise.

The deputies work directly with the Defender of Rights and under his authority. They are appointed by the Prime Minister upon a proposal of the Defender of Rights and the same rules concerning incompatibilities apply to them as to the Defender of Rights.

The institutional law provides for the compulsory appointment of a deputy vice-president of the College in Charge of the Defence and Promotion of Children. This person keeps the title of Defender of Children's Rights. It also provides for a deputy vice-president of the College in Charge of Security Ethics and for a deputy vice-president of the College in Charge of the Combat against Discrimination and the Promotion of Equality.

The College in Charge of Security Ethics and the College in Charge of the Combat against Discrimination and the Promotion of Equality both include, in addition to their vice-president, three figures who are appointed by the President of the Senate, three figures appointed by the President of the National Assembly, a member or former member of the *Conseil d'État* appointed by the Vice President of the *Conseil d'État* and a member or former member of the Court of

Cassation appointed jointly by the First President of the Court of Cassation and by the Director of Public Prosecutions of the aforementioned court.

The College in Charge of the Defence and Promotion of Children includes, in addition to its Vice President, two qualified figures who are appointed by the President of the Senate, two qualified figures appointed by the President of the National Assembly, one qualified figure appointed by the President of the Economic, Social and Environmental Council and one member or former member of the Court of Cassation appointed jointly by the First President of the Court of Cassation and by the Director of Public Prosecutions of the aforementioned court.

The Defender of Rights may convene a joint meeting of several colleges and of his deputies so as to consult them on the complaints or questions which might involve several of their fields of expertise or which might be particularly difficult to deal with.

The Defender of Rights may request explanations from any natural person or legal entity called into question before him and may require that person or entity to communicate any document which is necessary for the carrying-out of the Defender's mission. He may interview any person whose evidence appears useful to him. The persons or entities called into question may themselves call on the assistance of the council of their choice.

The notion of professional secrecy may not be called upon in dealings with the Defender of Rights.

When his requests are not complied with, the Defender of Rights may order the concerned persons to reply to him within a time limit which he shall set. When the order to reply is not complied with, the Defender of Rights may make a referral to the judge in chambers with a motivated request asking the judge to order whatever measures he may consider useful.

The Defender of Rights may carry out on-the-spot checks. Nonetheless in the case of administrative offices, the relevant authority may oppose this invoking the notion of serious and compelling reasons linked to national defence and public security. The on-site check may then only be carried out with the authorization of the judge in chambers.

In the case of private premises and with the exception of urgent circumstances, the person in charge of the premises is informed beforehand of his right to oppose the on-site visit or check. The on-the-spot check can only then be carried out with the authorization of the "liberty and custody" judge.

If the Defender of Rights so requests, ministers may give instructions to the inspectoral body concerned to carry out, within their remit, any checks or enquiries required. They shall inform the Defender of Rights of the action taken following such a request.

V. – POWERS

The Defender of Rights may decide not to follow up a referral: in this case he must set down the reasons for his decision.

He may propose a settlement between the person lodging the complaint and the person called into question. In the case of discrimination covered by the criminal code, the settlement may consist in the payment of a compromise fine.

He has recourse to the power of recommendation so as to guarantee the rights and freedoms of the wronged person, resolve the difficulties raised before him and avoid their recurrence. In particular, he may recommend the administration to equitably resolve the situation of the person lodging the complaint.

If the said recommendation is not complied with, the Defender of Rights may require the person called into question to take the necessary measures within a specific time limit.

If the said order is not complied with, the Defender of Rights may draw up a special report which is communicated to the person called into question. This report is made public, along with, if need be, the reply of the person called into question. This is done in accordance with the method deemed appropriate by the Defender of Rights.

Except in cases concerning judges, the Defender of Rights may request the relevant authority to bring disciplinary proceedings in light of the facts that he possesses and which appear to him to justify a sanction.

The Defender of Rights may request the Vice President of the *Conseil d'État* or the First President of the Court of Accounts to carry out any relevant studies.

If the Defender of Rights receives a complaint which is not submitted to a jurisdictional authority and which raises an issue requiring an interpretation or dealing with a legislative or regulatory provision, he may consult the *Conseil d'État* and render the opinion public.

He may recommend that legislative or regulatory modifications which appear useful to him may be implemented. He may be consulted by the Prime Minister on any Government bill which deals with his field of expertise. He may also be consulted by the Prime Minister, the President of the National Assembly or the President of the Senate on any issue which deals with his field of expertise.

VI. – THE SPECIFICITY OF MEDIATION WITH PUBLIC SERVICES

The Defender of Rights possesses the tasks and the mechanisms for action of the former Ombudsman of the Republic. As such, he is responsible for improving the relations between citizens, administration and public services. This is to be done chiefly by means of mediation.

This concerns administration but also all organizations which provide a public service: public hospitals, family allowance bodies (CAF), public health care bodies (CPAM), the social security scheme for independent workers (RSI), labour exchanges, energy providers (EDF, GDF), public transport providers (SNCF), ministries, consulates, *prefectures*, town halls, regional and departmental councils.

The Defender of Rights may not answer a referral nor may he make an auto-referral in matters concerning disagreements liable to occur between various public entities and bodies. Neither may he intervene in problems liable to occur between, on the one hand, such public entities and bodies and on the other hand, their employees, on account of the carrying-out of their jobs.

In the implementation of this final mission, the Defender of Rights possesses all the means and the powers provided by the new instruments but he is neither assisted by a college of experts nor by a deputy.

Provision is simply made for a General Delegate for Mediation who is appointed by the Defender of Rights and who is in charge of the “mediation with public services” mission.

File n°13

Equal Access for Women and Men to Elected Offices and Positions

Key Points

Although women obtained the right to vote and stand for election with the Ordinance of April 21, 1944, they remain underrepresented in elections and elected positions.

So as to make up for the delay in this field in France, the constituent power established, in the Constitution, the principle of "equal access by women and men to elective offices and positions" through the constitutional revision of July 8, 1999 (article 3, paragraph 5). The Constitution also requires legislators, as well as political parties and groupings, to implement this principle (article 4, paragraph 2).

On the basis of this constitutional principle, Parliament has passed several laws intended to encourage gender equality.

The constitutional revision of July 23, 2008, formally reaffirmed this principle by including it in article 1 of the Constitution.

The application of this constitutional principle by the legislator has certainly been the cause of a relative improvement in the numbers of women among elected officials.

This increase however differs according to the type of election, whether it be based on a list system or a single seat system.

By the ordinance of April 21, 1944, enacted by General de Gaulle, which dealt with the organization of public powers after the "Liberation", French women became voters and eligible for election. However, throughout the second half of the XXth century, they remained under-represented in all French elections. In 1997, for instance, only 10.9% of M.P.s were female and only 5.6% of Senators. This left France in second to last place in the field of gender equality by comparison with other European countries.

By enshrining in article 3 of the Constitution that the law "shall promote equal access by women and men to elective offices and posts" and in article 4 that "political parties and groups...shall contribute to the implementation of the principle", (Constitutional Act n°99-568, of July 8, 1999) the Parliament wished to put an end to the under-representation of women in French political life.

Following on from this constitutional revision, several laws were passed which implement this principle:

- Law n°2000-493 of June 6, 2000 aiming at promoting the equal access by women and men to elective offices and posts;
- Law n°2000-641 of July 10, 2000 reforming the electoral system for senatorial elections which applied the principle of gender equality to the election of Senators based on a proportional list system applied in departments electing three or more Senators. This law was modified by the Law n°2003-697 of July 30, 2003 reforming the election of Senators and which restricted the application of a proportional list system to departments where more than four Senators are elected;
- Law n°2003-327 of April 11, 2003 concerning the election of regional councillors and representatives of the European Parliament as well as public support for political parties;
- Law n°2003-1201 of December 18, 2003 dealing with male-female parity for lists of candidates in the election of members of the Assembly of Corsica;
- Law n°2007-128 of January 31, 2007, aiming at promoting the equal access by men and women to elective offices and posts;
- Law n°2008-175 of February 26, 2008, opening up equal access by men and women to the position of departmental councillor.

The constitutional revision of July 23, 2008, formally reaffirmed this principle by including it in article 1 of the Constitution.

The implementation of the principle of gender equality generally speaking led, between 2003 and 2009, to a distinct increase in the representation of women amongst elected officials. Nonetheless, this increase is still insufficient and from several points of view, appears to be linked to the type of election in which the candidates are involved.

Thus it can be noticed that for elections based on a list system, the gender parity of candidacies was easily imposed when linked to the notion of a penalty of non-enrolment on electoral registers. In the case of elections for single-seat constituencies, the principle of gender parity places fewer restrictions as it is only enforced by financial penalties for general elections and by the need for a substitute of the opposite sex for cantonal elections.

I. – GENDER EQUALITY IN ELECTIONS USING A LIST SYSTEM

Law n°2000-493, of June 6, 2000, aimed at promoting the equal access by men and women to elective offices and posts, imposed a strict female/male alternation on the lists for European and senatorial elections using proportional representation, as well as an alternation for every group of six candidates for regional elections and municipal elections.

In addition, this law made provision for a financial penalty for political parties which did not respect this principle in the putting forward of candidates for general elections.

Law n°2000-641 of July 10, 2000 applied the principle of gender equality to the election of Senators by broadening the proportional list system to departments electing three or more Senators, i.e. two thirds of Senators, instead of in departments electing five or more Senators.

However the Law n°2003-697 of July 30, 2003 once again reforming the election system for senatorial elections now reserves the proportional list system to departments where four or more Senators are elected, i.e. half of all Senators. Thus the single member system, which includes no obligation as regards gender equality now concerns half of all senatorial seats.

Law n°2003-327 of April 11, 2003 on the election of regional councillors and representatives of the European Parliament, as well as on public aid to political parties, reaffirmed the requirement of respecting strict alternation between women and men in the putting forward of lists of candidates for regional elections and to the European Parliament.

Law n°2003-1201 of December 18, 2003 made these same rules obligatory for the election of members of the Assembly of Corsica.

Law n°2007-128 of January 31, 2007, aiming at promoting the equal access by women and men to elective offices and posts extended the requirement of strict female/male alternation in the composition of electoral lists to the election of the executive for regions and municipalities of 3,500 inhabitants or more. The law makes provision for a gender parity requirement on the lists of deputy mayors elected by the municipal councils as well as a strict alternation on the lists for the members of the standing committee of regional councils. It also imposes gender parity regarding candidacies on lists for deputy chairmen of regional councils. The same rules apply to elections of members of the Assembly of French Citizens Living Abroad.

As a result of these changes to the electoral code, the principle of a strict female/male alternation applies to all these elections.

This represented a significant increase in the number of female candidates and in the number of women elected. However the movement begun by the implementation of the Law of June 6, 2000 does now seem to have slowed down.

After the municipal elections held in March 2008, the percentage of women councillors in municipalities of 3,500 inhabitants or more, was 48.5%. The overall figure for female municipal councillors, whatever the size of the municipality, reached 35% in 2008 compared with 21.7% in 1995. However, women represent only 13.8% of elected mayors if one includes all municipalities (14.2% in municipalities of less than 3,500 compared with 9.6% in municipalities of 3,500 inhabitants or more).

At the last partial renewals of the Senate in 2008 and 2011, the percentages of female Senators elected by this proportional method were respectively 27.5% i.e. 11 women out of the 40 Senators up for election using this method and 34.8% i.e. 39 women out of the 112 seats up for election using this method. By comparison, in the 2011 elections, 10 female Senators and 58 male Senators were elected using the majority electoral system, i.e. 17.2% were female.

Although women only made up 27.5% of the regional councillors in 1998, they have represented 48% of this same category since the elections of 2010 (and 47.6% after the elections of 2004). In addition, the application of the Law of January 31, 2007 has contributed to the strengthening of the number of females in the regional decision-making bodies as 47% of the current vice-presidents are women as opposed to 37.3% in 2004.

In June 2004, of the 78 French MEPs elected to the European Parliament, 34 of them (i.e. 43.6%) were women. On June 7, 2009, the number of women elected represented 44.4% of the French representatives at the European Parliament (i.e. 32 out of 72).

By the end of 2006 however, only 37.3% of the deputy presidents of regional councils were women and only 36.8% of the deputy mayors. It could have been expected that, given the increase in the number of female regional and municipal councillors in municipalities of over 3,500 inhabitants, women would have been represented in similar figures on their executive bodies. The Law of January 31, 2007, should contribute to the strengthening of female numbers on regional councils when the next elections to such bodies take place.

II. – GENDER PARITY IN SINGLE-SEAT ELECTIONS

As regards general elections, the implementation of the aforementioned Law of June 6, 2000 which provided for financial penalties for political parties which did not apply the rules on gender balance for candidates, had only limited effects.

Law n°2000-493 of June 6, 2000, modified law n° 88-227, of March 11, 1988 concerning the financial transparency of political life and aimed at introducing an adjustment in the public aid given to parties which took into account the respective proportions of male and female candidates.

In accordance with article 9-1 of law n°88-227 of March 11, 1988 modified by law n°2000-493 of June 6, 2000, the first part of this public aid was decreased when the gap between the number of candidates of each sex declaring themselves members of the party in question exceeded 2% of the total number of candidates. The percentage decrease in this public aid was equal to half the gap in respect of the total number of candidates. Thus if a party put forward 30% women and 70% men as the gap was 40%, public aid was decreased by 20%.

At the general elections of June 2002, where this 50% rate applied, the parties put forward 38.8% female candidates but only 12.3% women were elected to the National Assembly. It represented a slight progress by comparison with the general elections of 1997 (10.9% women). The UMP thus lost 30.3% of the first part of this aid, the UDF 30.1%, the PS and the PRG 15.4%, and the PCF 6.2%.

In order to provide the political parties with a greater incentive, the Law of January 31, 2007 raised the percentage of the decrease in public aid to 75% of the gap in respect of the total number of candidates. So, to take the previous example again, public aid will be reduced by 30% if a party only puts forward 30% female candidates. This new percentage did not however concern the June 2007 general elections. It was only applied after the first general renewal of the National Assembly following January 1, 2008 i.e. the general elections of June 2012.

The National Assembly which was elected in June 2007 had 18.5% women, i.e. quite a clear progression compared with the general elections of 2002 but still quite small when compared with women's representation in foreign Parliaments. Nonetheless the number of female candidates endorsed reached 41.6%, i.e. 2.8% more than in 2002. In June 2012, 153 women were elected to the National Assembly (26%).

For departmental elections, the principle of a financial penalty was rendered difficult by the number of elected officials not belonging to any political party and by the absence of the reimbursement of electoral expenses in certain cantons. These elections were therefore not included in the reform of June 2000.

At the 2004 elections, which had no legislative constraint, only 10.9% women were elected as departmental councillors.

To enable a growing number of women to progressively sit on departmental councils and to avoid the holding of by-elections too frequently, the Law of January 31, 2007 introduced substitutes for departmental councillors and imposed that the office-holder and his/her substitute should be of different sexes.

Law n°2008-175 of February 26, 2008, opening up equal access by men and women to the position of departmental councillor, made it automatic that a regional councillor who was retiring on account of a combination of offices, be replaced by his substitute. Previously in fact, the substitute only automatically replaced an elected councillor if the latter died. Otherwise a new election was held and this did not guarantee the substitute the possibility of seeking the position of regional councillor.

The number of female regional councillors, which was only 13.1% after the cantonal elections of 2008, has not considerably increased as it stood at 13.9% following the 2011 departmental elections. It must however be noted that for

these two sets of ballots, women represented only 20.9% and 23.2% of the candidates endorsed.

Today all elections are subject to legislative measures aiming at making progress in the field of gender parity between candidates. Encouraging results have been obtained in elections using a list system and these results should be improved when the Law of January 31, 2007 begins to take effect.

File n°14

The Election of an M.P.

Key Points

The 577 M.P.s of the National Assembly are elected, by universal suffrage, to sit for five years. Every French person of either sex may be a candidate provided he is at least eighteen years old, in possession of his civil and political rights and is not excluded by any law concerning personal or professional ineligibility.

In accordance with the Constitutional Act of July 23, 2008, French nationals living abroad are also represented in the National Assembly since the general renewal of June 10 and 17, 2012 and no longer only in the Senate.

The boundaries of constituencies and the distribution of M.P.s' seats must be based on the application of essentially demographic criteria so that the notion of voting equality is respected. Since the Constitutional Act of July 23, 2008, and in keeping with the Institutional Act of January 13, 2009 which brought into force article 25 of the Constitution, an independent committee publicly expresses an opinion on the Government and Private Members' Bills defining the constituencies for the election of Members of the National Assembly, or modifying the distribution of the seats of Members of the National Assembly or of Senators.

The organization of the election campaign is essentially a matter for the candidate himself. The Constitutional Council nonetheless monitors the proper conduct of the election and may declare it void, should it consider one candidate to have been given an unfair advantage.

In addition, since the beginning of the 1990s, there has been a strict monitoring of election campaign financing which has guaranteed the openness and fairness of elections.

☞ *See also files 1, 4, 15 and 16*

I. – VOTING METHOD AND NATURE OF THE ELECTION

1. – ELECTION BY UNINOMINAL MAJORITY IN TWO ROUNDS

M.P.s are elected by direct universal suffrage using a uninominal majority system in two rounds. All French citizens of at least eighteen years old who are in possession of their civil and political rights and who are not in a state of legal incapacity, may vote.

In order to be elected on the first round, a candidate must obtain an absolute majority, i.e. more than half the votes cast and a number of ballots equal at least to one quarter of the voters enrolled.

If no candidate is elected in this way, then a second round is required. Only those candidates who have obtained a number of ballots in the first round equal at least to 12.5% of the voters enrolled, may stand in the second round. In the second round, a relative majority is enough for election. Thus the candidate with the highest number of votes is deemed elected.

The election is held on a Sunday with the second round, when necessary, taking place on the Sunday following the first round.

2. – LOCAL ELECTION BUT NATIONAL REPRESENTATION

M.P.s are national representatives. Although each of them is elected in a single constituency, they each represent the entire nation.

In accordance with the traditional principle underlined in article 27 of the Constitution: “No Member shall be elected with any binding mandate”. As M.P.s are not legally bound by any political commitment, they are free to decide on their orientation in the exercise of their office.

3. – CONSTITUENCIES

The constituencies, in which each M.P. is elected, are drawn up by the Electoral Code within each department, taking into account the size of the population. At present, their number ranges, depending on the department, from 1 to 21.

Given that the last re-drawing of the electoral boundaries was in 1986, the Government was empowered by Law n°2009-39 of January 13, 2009 to re-draw the electoral boundaries by ordinance.

This operation had to respect a certain number of rules laid down by the aforementioned law and sanctioned by the jurisprudence of the Constitutional Council, i.e. the division of the constituencies had to be based on essentially demographic criteria; population discrepancies between constituencies could be justified when certain considerations of a general interest were taken into account; in no case could the population of a constituency differ by more than 20% from the average population in the constituencies of the department. In addition, except in circumstances justifiable for demographic or geographical reasons, constituencies had to be drawn-up on a single territory.

In its draft ordinance, the Government proposed a re-drawing procedure which applied the so-called ‘slicing’ or Adams method to the most recent demographic data. A divisor is established (in this case 125,000 inhabitants) and one seat is allotted for each fraction of the divisor.

In accordance with the Constitutional Law of July 23, 2008 and with the Institutional Law no. 2009-38 of January 13, 2009, applying article 25 of the Constitution, the Government then had to submit, for opinion, this draft boundary re-drawing ordinance to an independent commission. This opinion dealt both the constituencies of M.P.s elected in departments, in overseas territorial communities governed by article 74 of the Constitution, in New Caledonia as well as with those of M.P.s representing the French abroad.

As regards the constituencies of those M.Ps representing the French abroad now represented in the National Assembly in accordance with the Constitutional Law of July 23, 2008, the Constitutional Council, in its aforementioned decision, accepted that there would be no requirement concerning a maximum demographic gap between the most and the least populated constituency. This exception was specifically justified by geographical constraints. The ordinance thus proposed to create 11 constituencies: 6 for Europe, 2 for America and the 3 others bringing together the countries of Africa and Asia.

With the Law no.2010-165 of February 23, 2010, Parliament ratified the Ordinance no. 2009-935 of July 31, 2009 which led to a new distribution of M.P.'s seats between the departments of mainland and overseas France, the overseas communities and New Caledonia as well as the specific representation of the French established outside of France, by modifying Table no. 1 annexed to article 125 of the electoral code.

4. – LENGTH OF TERM

a) A Five-year Term

The National Assembly is entirely renewed, in principle, every five years. Thus the powers of the National Assembly expire (the Institutional Act no. 2001-419 of May 15, 2001 modified the expiry date of the powers of the National Assembly), "*on the third Tuesday of June of the fifth year following its election*" and general elections must take place within the sixty days preceding this date.

b) By-elections

The electoral system limits the number of by-elections by making provision for the election, at the same time as that of the M.P., of a substitute who will replace the M.P. in the case of death, appointment to Government or to the Constitutional Council or temporary mission upon the Government's request for more than six months.

Thus by-elections are held only in the other cases when a seat becomes vacant (annulment of the election by a judge, dismissal, resignation or the election of the M.P. to the Senate or to the European Parliament).

Such a by-election must take place within a maximum period of three months maximum dating from the event leading to the seat becoming vacant.

Such a limit is intended to guarantee a speedy return to the normal functioning of parliamentary institutions.

Nevertheless, no by-election may take place within the twelve months preceding the expiry of the powers of the National Assembly.

Since the Constitutional Act of July 23, 2008, M.P.s who have been appointed members of Government, may, when their ministerial role is ended, retake their seat in the National Assembly (article 25 of the Constitution).

c) The Exercise of the Right to Dissolve by the President of the Republic

In addition, the President of the Republic may decide to exercise the right to dissolve the National Assembly, granted to him by article 12 of the Constitution.

In this case, the general elections must take place at the earliest twenty days and at the latest, forty days after the publication of the decree proclaiming the dissolution.

II. – CONDITIONS OF CANDIDACY AND ELIGIBILITY OF CANDIDATES

All people who, upon the date of the first round of voting, fulfil the conditions to be a voter and do not correspond to any of the categories concerning ineligibility laid down in the electoral code, may put forward their candidacy and may be elected.

Frenchwomen and Frenchmen over the age of eighteen, in possession of their civil and political rights and not being deemed legally incapacitated, may vote.

1. – INELIGIBILITY OF AN INDIVIDUAL

Some specific categories of people may not be elected:

- Those placed under wardship or guardianship;
- Those having been declared ineligible on account of a breach of the rules concerning the financing of electoral campaigns or guilty of fraudulent manipulations leading to a violation of the legality of the ballot.

Similarly, no person not having fulfilled his national service obligations may be elected to Parliament.

2. – INELIGIBILITY ON ACCOUNT OF ONE'S FUNCTION

Certain people, whose professions or offices could grant them an unfair advantage in an election, thus creating a clear imbalance between the candidates, are excluded from being elected.

The law clearly states the offices or professions thus concerned as well as the geographical range and the length of such ineligibility to be elected. Therefore:

– The Defender of Rights, his deputies and the General Inspector of Prisons are ineligible for election throughout the entire territory during the term of their office;

– Prefects are ineligible for election in the constituencies which fall within their sphere of office or offices which they have held within the previous three years;

– The following may not be elected in any constituency which falls within the sphere in which they have carried out their office during the previous six months:

  • Judges;

  • Military officers with a territorial command;

  • Some civil servants with managerial or monitoring positions in the foreign, regional and departmental services of the State.

III. – ELECTION CAMPAIGNS AND THEIR FINANCING

1. – THE RULES OF THE CAMPAIGN

The running of an election campaign is entirely the responsibility of the candidates and is usually dependent on certain objective criteria (size of the constituency, town-country ratio etc.). In this field which is at the very heart of democracy, freedom is essential and prohibitions must be kept to the very minimum. Thus the candidates can, in principle, meet the population, hold meetings or distribute leaflets as they so wish.

Nonetheless, the following are forbidden:

– Unauthorized postering, as special space is given over in each area, during the election campaign, for official posters of each candidate;

– The use for electioneering of commercial advertising either by means of the press or television and radio.

Such abuses committed during the election campaign (e.g. defamation, the use of official speeches, intimidation etc.) are punishable by the judge in charge of supervising the fairness of the election.

This supervision is of a pragmatic nature and aims at assessing if, during the campaign, the rule of equality between candidates has been broken by irregular procedures. Thus, the widespread circulation of a leaflet containing false allegations on the day before an election would certainly lead to the invalidation of the election, especially if the result were very close. However the judge would certainly decide that the communication of defamatory material has had no effect on the election if the candidate who is called into question has had the time to reply and if the margin of victory were to be very wide.

2. – THE FINANCING OF ELECTORAL EXPENDITURE

As regards the financing of his election campaign, every candidate at a general election must follow organizational rules and provisions which limit, both from a quantitative and qualitative point of view, the money which can be spent. The compliance with such rules and provisions is necessary for the subsequent reimbursement of part of his expenses as well as for, in certain cases, the very validation of the election (see electoral litigation).

a) The Appointment of a 'Representative' and the Setting-up of a Campaign Account.

During the year prior to the election (or counting from the date of the dissolution decree), the garnering of the funding necessary for the election must be placed under the responsibility of a representative especially appointed to do so. Such funds must be placed in accounts set up for this purpose.

The representative can be, depending on the choice of the candidate, either a natural person or an association dealing with electoral financing. In either case, the representative must open and manage a deposit account set up specifically for the financial operations of the campaign.

Every candidate in a general election, whether he is elected or not, must set up a campaign account which records all incoming and outgoing financial operations linked to the election. This account must also include both as regards revenue and expenditure, the financial equivalent of all the fringe benefits, benefits in kind and services which the candidate has received or provided from during his campaign.

The campaign account must either be in the black or break even. It cannot be in the red. It must be passed by a certified accountant and communicated, along with all pertaining documents. The account must be presented before 6pm on the second Friday following the first round of the election, to the National Committee on Campaign Accounts and Political Financing, which will either approve or reject it in the six months following its filing.

b) Supervising Expenditure and Revenue

In order to reduce the increase in election campaign expenditure and to maintain openness, as well as to limit the number of private donations in the financing of campaigns, the law has established several boundaries.

As regards funding:

– Only political groupings which, as beneficiaries of public financing or having a financial representative, are under the supervision of the National Committee on Campaign Accounts and Political Financing, can be involved in the financing of candidates' campaigns;

– The involvement of a legal entity in the financing of a candidate's electoral campaign is prohibited. This is the case for local authorities,

companies, public bodies, associations or trade unions and applies to whatever form of financial involvement this might be (gifts, provision of goods, services or other);

– Gifts from individuals have an upper limit of €4,600 and every gift over €150 must be payable by cheque, by direct debit or by credit/debit card (article L. 52-8 of the Electoral Code). In addition, the total amount of gifts made in cash must be less than or equal to one fifth of the limit of expenditure allowed (article L. 52-8 of the Electoral Code).

As regards expenditure:

– In 1993, the law reduced the limit for authorized expenditure from €76,000 to €38,000 plus an allowance of €0.15 per inhabitant of the constituency (article L. 52-11 of the electoral code); this limit which was set in 1993, is updated every three years in order to take the rise in the cost of living into account. It was multiplied by a factor of 1.26 by Decree no. 2008-1300 of December 10, 2008;

– In addition to a reimbursement of election campaign expenditure, the law grants candidates who have obtained at least 5% of the votes cast in the first round of the election, a fixed reimbursement concerning their campaign expenditure.

To take advantage of this, the candidate who is proclaimed elected must:

– Remain within the legal limits as regards the opening and the accounting of the campaign account and as regards the limit on electoral expenditure;

– Be able to prove that he has lodged his declaration of estate with the Committee for the Financial Transparency of Political Life.

The amount reimbursed is equal to the amount of expenditure which, according to the campaign account, has actually been spent by the candidate or represents his personal debt. Nonetheless this amount cannot exceed one half of the legal limit on electoral expenditure.

IV. – ELECTION LITIGATION PROCEDURE

The Constitutional Council must watch over the fairness of parliamentary elections. Thus, it makes rulings on eligibility, on the holding of the elections and on the respect of the rules on the financing of campaigns for the election of M.P.s.

1. – LITIGATION REGARDING ELIGIBILITY TO BE ELECTED

As regards matters of eligibility, the Constitutional Council is called upon to make rulings after appeal by the administrative tribunals. It only rules on ineligibility to be elected and once this has been ascertained the ruling is

absolute. When it is called upon to make such a ruling, the Constitutional Council does so concerning both the candidate and his substitute.

2. – LITIGATION REGARDING ELECTORAL OPERATIONS

The procedure concerning electoral operations deals with both the balance of campaign funding and the fairness of the holding of the election itself.

As regards the campaign itself, the electoral code is particularly strict since, outside of that which is allowed (sending official documents and postering in authorized places), everything else is prohibited. In concrete terms, the Constitutional Council judges the impact of irregularities on the outcome of the election less according to the abuse of campaigning itself and rather according to the imbalance between the candidates which can result from it.

Since the Constitutional Council deals with the real issues of electoral operations (it judges the actual holding of the election, the opening of the ballot boxes, as well as the count) its remit is very broad. This may lead it, when it notes an irregularity or electoral fraud which may have a significant impact on the election result, to modify the results or even, when necessary, to declare the election void.

3. – LITIGATION REGARDING THE FINANCING OF GENERAL ELECTIONS

The litigation procedure regarding the financing of general elections deals, first of all, with the supervising of the campaign account. The electoral code makes provision for the ineligibility for election for three years of any candidate who has not presented his campaign account according to the conditions and within the limits laid down.

Since the Institutional Law of April 14, 2011, concerning the election of M.P.s and Senators, the judge has the power to assess if he feels there has been a desire to cheat at the election or if there has been a particularly serious breach of the rules concerning the financing of electoral campaigns. In this case, he must declare the candidate ineligible.

File n°15

The Financing of Political Life: Political Parties and Election Campaigns

Key Points

Beginning in 1988, lawmakers have passed many provisions concerning the financing of political life and election campaigns, which have all been aimed at providing greater openness in this area.

Political parties receive state aid depending on their results in elections. This aid now represents their main source of financing. However, gifts from other legal entities are forbidden.

Candidates at elections must respect a ceiling placed on expenditure which is set by law and may also receive public aid. In order to be eligible for such aid they must be able to justify all their expenditure and revenue in a campaign account which is managed by a representative appointed by them and presented by a chartered accountant.

☞ *See also files 14 and 16*

At election time, political parties and candidates have a substantial amount of expenses. Until 1988, no specific legal structure actually covered the financing of these expenses. This loophole encouraged certain abuses which have been curbed progressively by measures taken since that date.

The current mechanism, which has been gradually fine-tuned, is based on several fundamental principles:

– The legal recognition of a legal status for political parties. The Constitution provides political parties with two objectives:

  • To contribute to the exercise of suffrage;

  • To promote equal access by men and women to elective offices;

  Parties which fulfil these objectives can take advantage of public financing;

– Party and candidate resources must have a certain number of safeguards attached, thus guaranteeing openness and avoiding secret financing and the financial pressures which might compromise their independence;

– Thus, since 1995, public authorities have decided to cut all financial links between companies and the actors in political life (the parties and candidates) and to definitively prohibit legal entities from taking part in the financing of political life;

– Election expenditure has been capped both to avoid a continual rise in communication expenses as well as to ensure greater equality between candidates outside of their personal assets;

– To offset the lack of membership financing, which has always been modest in France, the State has set up a system of financial aid to parties and of reimbursement of a part of the campaign expenses, provided that the parties strictly follow the laws which govern such spending;

– Non-respect of such laws can have a series of consequences for the perpetrators (legal penalties, financial penalties and especially electoral penalties concerning ineligibility for election for the candidates, which have the effect of temporarily forcing those who take the risk of electoral fraud to withdraw from political life);

– The implementation of the rules concerning the financing of parties and election campaigns falls within the remit of an independent administrative authority, the National Committee on Campaign Accounts and Political Financing (CNCCFP), which is under the authority of the electoral judge (i.e. the Constitutional Council for presidential and general elections and the administrative judge for other elections);

– The estate of M.P.s must be declared at the beginning and end of each term in order to be sure that they have not taken advantage of their office to gain undue wealth. This verification is carried out by a second independent body, the Committee for Financial Transparency in Political Life (CTVP).

I. – THE FINANCES OF POLITICAL PARTIES

1. – THE EXPENDITURE OF POLITICAL PARTIES

Political parties have all sorts of expenses. These include:

– Salaries for permanent members of staff;

– Rent of offices and premises;

– Material, secretarial and postage expenses;

– Advertising and communication expenses;

– Drafting, printing and distribution of various publications (newspapers, pamphlets, brochures etc.).

In addition, parties spend large sums of money at election time, by financially supporting the candidates from within their ranks.

2. – THE RESOURCES OF POLITICAL PARTIES

In order to finance their expenses, political parties have two main sources: private financing, which is usually small, and public aid from the State, which has become the most substantial amount.

a) Private Financing

Like any association, political parties may receive dues from their members. In practice, such membership contributions only represent a tiny fraction of the resources of the party (the membership fee received from local officials and M.P.s is generally higher but such practices vary from party to party).

Parties may have other private income but only within the limits of legislation which is becoming stricter and stricter: resources coming from the economic activities of the party, bequests etc.

This category also includes donations from natural persons, which are covered by the laws of 1995. Despite the existence of tax incentives, voluntary contributions from natural persons have remained quite small.

Since 1995, legal entities, whatever they may be (often companies), are no longer allowed to make the slightest donation nor to offer the slightest benefit in kind to political parties.

b) Public Financing

The public financing of political parties was progressively covered by a series of laws which were enacted between 1988 and 2010.

Every year, allocations set aside for political parties and groupings are included in the annual Finance Bill. They amount to around €75 million for 2012 (in the "Political, Cultural and Associative Life" programme of the "General and Territorial Administration of the State" mission) divided between more than 40 parties or groupings.

These funds are divided between the political parties:

The first allocation (50%) depends on their results at the first round of the previous general elections. This part of the public financing helps parties with candidates in at least 50 constituencies or in at least one department or overseas community, who obtained at least 1% of the votes cast (this provision was added in 2003 and aimed at reducing the sharp increase in candidacies which had grown from 2,888 at the first round of the 1988 general elections to 8,444 in the 2002 campaign). This first allocation is reduced in cases of non-application of the rules encouraging gender equality between men and women;

The second allocation (50%) goes to the parties represented in Parliament according to their number of M.P.s. Only those parties which have received funds through the first allocation are eligible for the second.

As of 2014, the distribution of public funds to political parties will also take into account the results of the elections of territorial councillors (the Territorial Communities Reform Law of December 16, 2010).

c) Other Types of Public Aid to Political Parties

In addition to the aforementioned fiscal incentives, the State also provides political parties, in subsidiary ways, with means which could be considered to have a financial equivalent and can thus be seen as indirect financing:

- Political groupings which are represented by parliamentary groups at the National Assembly or the Senate, have a right, outside of election campaigns, to 'air time' which gives them the chance to express themselves on public radio and television channels;
- The State grants political parties tax reductions (company tax at a reduced rate) on some of their own revenues (the rent on their developed and non-developed buildings for example).

II. – THE FINANCING OF ELECTION CAMPAIGNS

The current measures in force are based on several principles:

- Private financing takes the shape of donations coming from natural persons or from political parties (donations from parties have no limit while those from natural persons cannot exceed €4,600 per election);
- The most expensive campaign expenses are prohibited (television and radio advertising and, in the six months prior to the election, telephone and computer marketing, press advertising and poster campaigns);
- Electoral expenditure is limited according to the number of inhabitants. Thus for a general election, this limit which was set in 1993, is €38,000 per candidate plus an allowance of €0.15 per inhabitant of the constituency. Since the Law of April 14, 2011 which simplified the provisions of the electoral code and dealt with the financial transparency of political life, these limits are usually updated every year according to inflation. The initial Finance Law for 2012 and the Institutional Law of February 28, 2012, have however frozen these limits until a balance in public finances has once again been reached. For general elections for example, the current limit is thus that which was set by Decree n°2008-1300 of December 10, 2008;
- Each candidate must appoint a 'financial representative' who may, according to the case, be a natural person or an association dealing with

electoral financing set up in accordance with the Law of 1901 on associations.

This representative is the only person/body authorized to collect funds which will be used to cover election expenses and to make payments to cover expenses (the candidates are thus prohibited from having any direct financial dealings).

He must set up a campaign account which deals with all the revenues and expenditures linked to the election campaign. Unless the candidate obtains less than 1% of the votes cast, this account, which is passed by a certified accountant, will be submitted for inspection to the National Committee on Campaign Accounts and Political Financing (CNCCFP). The CNCCFP will either approve, revise or reject the campaign account which has been put before it. In the case of rejection, the CNCCFP refers the matter to the electoral judge who may, if an irregularity is established, announce the dismissal of the elected candidate and the ineligibility for election of the guilty candidate for a period as long as three years.

If the account is accepted, the State grants candidates with at least 5% of the ballots cast at the first round, a reimbursement which can reach 50% of the expenditure limit. This percentage was reduced to 47.5% by the initial Finance Law of 2012 and by the Institutional Law of February 28, 2012.

On top of this set sum which is granted to candidates, the State also directly covers a variety of other expenses (printing of ballot papers, circulars, cost of postering in the spaces set aside for this etc.).

III. – TRANSPARENCY REGARDING AN M.P.'S ESTATE

The aim of the 1988 laws, as well as dealing with the financing of political parties and election campaigns, was to ensure transparency regarding an M.P.'s estate, so as to avoid him taking advantage of his elected office to gain undue wealth.

Thus the obligation to make a 'declaration of estate' at the beginning and end of each term of office was introduced. The checking of such 'declarations of estate' is carried out by the Committee for Financial Transparency in Political Life, which is made up of high-ranking judges.

Since the Law of April 14, 2011, criminal sanctions (fines and the loss of civil and political rights) have been introduced concerning persons who consciously omit to declare a substantial part of their estate or who provide an untrue assessment which renders their declaration false and prevents the Committee for Financial Transparency in Political Life from carrying out its task.

File n°16

Status of the M.P.

Key Points

M.P.s are elected to represent the entire Nation and take part in the exercise of national sovereignty. They pass laws and monitor Government action. Like Senators, they have a protected status. This status was not designed as a privilege but as a means to provide M.P.s with the independence and freedom of speech necessary for the carrying-out of their office. This particular protection is established by the principle of parliamentary immunity which is based on the Constitution itself.

This recognition of a specific status carries with it certain counterweights, as the office of M.P. must be carried out without being submitted to any influence which could impinge upon its free exercise. In addition, parliamentarians have to fulfil certain obligations and respect certain prohibitions.

Beyond the rights and obligations linked to his parliamentary office, the M.P. may also, in his official capacity, carry out various responsibilities both within and outside of the National Assembly.

He is obliged to follow a code of ethical conduct. The Commissioner for Ethical Standards of the National Assembly is tasked with overseeing this aspect.

☞ *See also files 15 and 17*

I. – PARLIAMENTARY IMMUNITY

Parliamentary immunity is the term used to refer to the group of provisions which provide parliamentarians with a legal system exempting them from the constraints of ordinary law in their dealings with the Law so as to maintain their independence.

The wish to reconcile the necessary protection of the exercise of parliamentary office with the principle of the equality of citizens before the Law has led to the definition of two categories of immunity: unaccountability and inviolability.

1. – UNACCOUNTABILITY

The principle of unaccountability, or absolute immunity, shields parliamentarians from prosecution concerning acts linked to the exercise of their office. It is laid down by the Constitution, which in article 26, paragraph one, states that ‘no Member of Parliament shall be prosecuted, investigated, arrested,

detained or tried in respect of opinions expressed or votes cast in the performance of his official duties'.

Unaccountability covers all acts of parliamentary office: speeches and votes, bills, amendments, reports or consultations, questions, acts carried out during a mission requested by any parliamentary body.

It protects parliamentarians against any legal proceeding, civil or criminal, which could be brought for acts which, when carried out outside of the framework of parliamentary office, could lead to a criminal prosecution or the civil liability of the person responsible for them (defamation or slander for example).

However, jurisprudence has excluded remarks made by a parliamentarian during a radio interview or opinions expressed in a report written for a mission requested by the Government.

So, even if it ensures broad protection, it does not mean total immunity, since during their speeches in plenary sitting, M.P.s remain subject to the disciplinary system provided for by the Rules of Procedure of the National Assembly.

As regards its field of application, the principle of unaccountability has an absolute nature, as it cannot be withdrawn by any procedure. It is permanent since it applies throughout the entire year, including during recess. It is perpetual and is applied to proceedings concerning acts carried out during the term of office even after such a term has come to an end. The implementation of unaccountability falls entirely and purely within the remit of the judiciary. It is a matter of public order and the parliamentarian may not abandon it.

2. – INVIOLABILITY

The principle of inviolability attempts to avoid situations whereby the exercise of parliamentary office is hindered by certain criminal proceedings dealing with deeds carried out by M.P.s acting as normal citizens. It governs the conditions for the application of *criminal proceedings concerning acts outside its remit.*

Although, since the reform of August 4, 1995, the system of inviolability no longer protects M.P.s from the institution of proceedings (indictment), nonetheless no M.P. can be arrested nor be subjected to any other custodial or semi-custodial measure (judicial supervision) without the authorization of the *Bureau*, except in the case of a serious crime or other major offence committed *flagrante delicto* or of a definitive conviction. In addition, the detention, subjection to custodial or semi-custodial measures or prosecution of an M.P. are suspended for the duration of the session if the Assembly so requires.

Inviolability concerns only the person of the parliamentarian. It only applies in matters concerning the criminal or magistrate's court.

Unlike unaccountability, the application of which is not limited in time, inviolability has a reduced field of application which is limited to the duration of the term of office.

Requests for arrest or for custodial or semi-custodial measures concerning an M.P. are made by the *Procureur Général* (Principal State Council) to the competent Court of Appeal and are transmitted by the Minister of Justice to the President of the National Assembly and then examined by a delegation of the *Bureau* and then by the *Bureau* itself. The request is not published and the examination is carried out in the strictest confidentiality. Only the decision of the *Bureau* is published in the *Journal officiel* and in the *Feuilleton*.

The role of the *Bureau* is purely to make a pronouncement on the serious, fair and sincere nature of the request. Judging by the decisions the *Bureau* has taken since the 1995 constitutional revision, its power of assessment allows it not only to accept or reject the request overall but, if need be, to only take certain aspects of it into consideration.

Requests for the suspension of legal proceedings, for detention or for custodial or semi-custodial measures are addressed to the President of the National Assembly by one or several M.P.s. They are then distributed and returned to the committee set up in accordance with article 80 of the Rules of Procedure. The M.P. in question or the colleague he has requested to represent him must appear before this committee which then draws up a report. Once this report has been distributed, the discussion of the request is included on the agenda of the National Assembly. A time-limited debate on the examination of the request is held in plenary sitting and, at its conclusion, the Assembly reaches its decision. This decision is binding on both the administrative and judicial authorities. It leads, for the duration of the session, to either the suspension of all legal proceedings or to the withdrawal of judicial supervision and the release of the imprisoned M.P.

II. – INCOMPATIBILITY

The notion of incompatibility, which is linked to the constitutional principle of the separation of powers, is the legal impossibility of combining certain offices with that of M.P. Such incompatibilities were first decreed in the public sector but this was later on extended to include certain offices carried out in the private sector. As opposed to the notion of ineligibility, the notion of incompatibility does not, in itself, rule out the fact of being elected but requires the elected candidate to make a choice.

1. – INCOMPATIBILITY WITH ELECTED PUBLIC OFFICE

The office of M.P. may not be combined with that of Senator, that of Member of the European Parliament (M.E.P.) and with that of President of the Republic.

In addition, the office of M.P. is incompatible with more than one of the following offices: regional councillor, departmental councillor, city councillor of Paris, councillor in the Assembly of Corsica, councillor in the Assembly of Guiana, councillor in the Assembly of Martinique and local councillor in a town of more than 3,500 inhabitants.

However, it remains possible to combine the office of M.P. with a local executive office (President of the Regional Council, President of the Departmental Council, mayor)

2. – INCOMPATIBILITY WITH NON-ELECTED PUBLIC OFFICE

So as to free M.P.s from the links which might make them dependent on another power or authority, the office of M.P. may not be combined with the position of member of the Government, of the Constitutional Council or of the Economic, Social and Environmental Council. Nor may it be combined with the position of judge or member of the High Council of the Judiciary.

More generally, the combination of non-elected public positions with that of the office of M.P. is considered incompatible and civil servants who find themselves in such a situation upon their election must be seconded. Nonetheless, it is possible for M.P.s to continue to hold certain positions in higher education.

Temporary missions at the Government's request are considered compatible with the office of M.P., as long as they do not exceed six months.

3. – INCOMPATIBILITY WITH OTHER PROFESSIONAL ACTIVITIES

The growing role of the State and the importance of certain interests in community life have led to specific positions in companies on a restricted list, as well as the carrying out of certain actions, being forbidden to M.P.s.

Thus it is prohibited to combine the office of M.P. with managerial positions in state-owned companies or in state public bodies, i.e. organizations closely dependent upon public authority (unless the M.P.s are appointed as members of the board of management in accordance with the law governing state-owned companies or state public establishments).

Similarly, combination is prohibited with managerial positions in certain private companies which have been granted benefits by the State or public authorities in accordance with their special regulations. Equally, combination is prohibited with positions in companies working exclusively in the financial or public savings sector or those operating mainly for or under the authority of the State or a public body, as well as those carrying out certain activities in the real estate field.

It is prohibited for an M.P., during his term of office, to begin to carry out consulting work, unless he already carried out such an activity before his election. This prohibition is nonetheless not applicable to the members of liberal professions with a regulated status, such as the profession of lawyer.

If an M.P. is a lawyer, he may not plead against the State, state-owned companies, or public bodies and establishments. This prohibition also applies to all the members of the legal firm in which the M.P. is employed.

4. – MONITORING AND PENALTIES

So as to enable the monitoring of professional activities which are incompatible with parliamentary office by the *Bureau* of the National Assembly, M.P.s must, within one month of taking up office, resign from all incompatible activities and submit to the *Bureau* a declaration of professional activities or of general interests which they intend to continue. Those M.P.s not providing such a declaration are required to resign.

In the case of doubt or of a challenge, the *Bureau* refers the matter to the Constitutional Council. The Minister of Justice and the M.P. in question may also refer the matter to the Constitutional Council. If the Constitutional Council finds in favour of incompatibility, then the M.P. has 30 days to rectify the situation. If he does not do so within this limit, he is declared to have resigned from office by the Constitutional Council.

In the case of the combination of offices, the M.P. has a thirty-day limit to resign from whichever office he chooses. If he does not comply, the local office which was obtained at the earliest date automatically comes to an end.

When an act contravening the rules in the field of pleading or the use of the title of M.P. has been committed, the penalty is instantaneous. The M.P. in question is declared to have resigned from office by the Constitutional Council, upon the request of the *Bureau* or the Minister of Justice.

III. – OBLIGATIONS AND PROHIBITIONS WHICH APPLY TO M.P.S

1. – SPECIFIC PROHIBITIONS

These prohibitions, which deal with very specific acts and situations, exist mainly in an attempt to raise the moral standards of political life:

- To shield the parliamentarian from all forms of pressure, no M.P. nor Senator may receive, except in certain circumstances, any French decoration during his term of office;
- To avoid all violation of the dignity of parliamentary office, neither M.P.s nor Senators may use their position for advertising reasons;
- To avoid any media organization from hiding behind the immunity of its owner/editor so as to avoid prosecution in the case of a press offence, the company must, if its editor is an M.P., appoint a co-director chosen from a group of people who do not enjoy parliamentary immunity. The same applies for communication services to the public via electronic means (internet sites).

2. – DECLARATION OF ESTATE

The legal and financial status of an M.P. has a counterweight in the obligation of transparency. Therefore, a monitoring system was set up in 1988 making it possible to check that the exercise of the office of M.P. has not been an undue source of personal wealth for the member.

The obligation of filling out a declaration of estate at the beginning and at the end of the term is a way of avoiding that M.P.s take advantage of their office to become unduly wealthy.

Thus, each M.P. is required, within two months of his election, to submit to the Committee for Financial Transparency in Political Life, a precise and honest declaration on his word of honour, of his estate including all his own property as well as that held jointly. These are valued at the date of the election.

A new declaration of estate must be submitted to the same body at the earliest two months and at the latest one month before the end of the term.

These declarations are not made public.

If this obligation is not fulfilled, then the Committee for Financial Transparency in Political Life refers the matter to the *Bureau* of the National Assembly which in turn transmits it to the Constitutional Council. The latter, if need be, may find in favour of ineligibility, and thus declares the M.P. to be dismissed from office. Each infringement to the obligation to declare is punishable by a €15,000 fine: in addition each deliberate omission or each false declaration is punishable by a €30,000 fine and the loss of civil and political rights.

IV. – OFFICES PERMITTED TO MEMBERS OF PARLIAMENT

M.P.s may be called upon to take on certain offices, other than those that are exercised within the National Assembly, which have a connection with their position.

Certain prerogatives are carried out as of right either on as an individual or in the capacity of the holder of certain specific positions within the National Assembly:

- Representation of the National Assembly in extra-parliamentary organizations, i.e. bodies on which M.P.s sit on account of a legislative or statutory text (e.g. the Board of Directors of *France Télévisions*, the Supervisory Board of the *Caisse des dépôts et consignations*, the Pensions Advisory Council, the National Council on Noise Control etc.);
- Carrying-out, upon the request of Government, a “temporary mission” of a maximum length of six months (see later).

V. – ETHICAL STANDARDS AT THE NATIONAL ASSEMBLY

The issue of the prevention of conflicts of interest has been the subject of a broad debate over the last two years both in the political sphere and in the private shere.

In 2010, the Bureau of the National Assembly thus looked very closely at the ways to prevent any illegitimate suspicion from being directed at M.P.s and at the same time to set up the mechanisms necessary for the resolution of cases which could appear contentious.

It was for this reason that a cross-party working group made up of members of the Bureau, M.P.s appointed by their group and the Chairman of the Law Committee, was set up.

This working group reflected deeply on the topic taking into account the legitimate expectations of the citizens and the particularity of the M.P.'s situation. In order to do this, it interviewed many specialists and practitioners on ethical questions who came both from the private and the public sectors. It also drew up a comparative report on the practices of parliaments in other western democracies.

On the basis of these hearings and of these proceedings, the working group proposed a mechanism for the prevention of the conflict of interest which is not intended to be based on a punitive but a teaching approach so that each M.P. could avoid finding himself in a position which could lead to criticism.

First of all, it drew up a definition of conflict of interests as "a situation of interference between the duties of the M.P. and a private interest which, by its nature and strength, could reasonably be regarded as influencing, or appearing to influence, the carrying-out of his parliamentary office".

So as to avoid such situations, the working group drew up three proposals:

– the adoption of a Code of Conduct which would set down the essential principles which M.P.s would undertake to abide by;

– the signature, at the beginning of the term of office, by each M.P. of a declaration of interests;

– the introduction at the National Assembly of the position of Commissioner for Ethical Standards, in charge of receiving the aforementioned declarations of interest, of advising the M.P.s on each delicate situation and of alerting the Bureau in the case of infringement.

These proposals were presented on April 6, 2011 to the Bureau and were adopted unanimously.

Although the Code of Conduct was immediately implemented as well as the provisions concerning the Commissioner for Ethical Standards, the application of the declarations of interest only came into effect with the XIVth term of Parliament which began in June 2012.

On October 10, 2012, the *Bureau*, upon proposal of the Speaker of the National Assembly, Mr. Claude Bartolone, unanimously appointed Mrs. Noëlle Lenoir as Commissioner for Ethical Standards, after approval by the chairmen of the opposition groups.

File n°17

M.P.s' Allowances and Material Means

Key Points

The free exercise of the office of M.P. cannot be guaranteed alone by its legal independence. The parliamentary allowance, which is an essential element in the democratization of political regimes, is aimed at offsetting the expenses met in the carrying-out of office. It enables every citizen to imagine running for Parliament and guarantees those elected the means to devote all their energy, in total independence, to fulfilling the role for which they have been elected.

The principle of indexing the parliamentary allowance to the salaries of high civil servants has been applied in France since 1938 and was confirmed by the ordinance attached to the Institutional Act no. 58-1210 of December 13, 1958. In addition, the necessary financial independence of the M.P., which for a long time was symbolised by the parliamentary allowance, has been strengthened, at the same time as the development of the means of the executive, by different individual and collective grants and benefits. This trend marks a growing professionalization in the carrying out of the office of M.P.

I. – PARLIAMENTARY ALLOWANCE

1. – THE DIFFERENT ELEMENTS OF THE ALLOWANCE

The allowance includes three components: the basic parliamentary allowance, the residential allowance and the attendance allowance.

The basic parliamentary allowance is indexed to the salary of the highest-ranking state civil servants. It is equal to the mean of the lowest and highest salary of civil servants in the category "*hors échelle*" (highest level).

In addition, M.P.s receive, as civil servants do, a residential allowance. This represents 3% of the gross basic parliamentary allowance.

On top of this, M.P.s also receive an attendance allowance which is equal to a quarter of the sum of the first two allowances.

As of July 1, 2010, the gross monthly allowances are as follows:

– Basic allowance	5 514,68 €
– Residential allowance (3%)	165,44 €
– Attendance allowance (25% of the total)	1 420,03 €
– Gross monthly allowance	7 100,15 €

From a tax point of view, the basic parliamentary allowance plus the residential allowance are taxable at the rates applicable to normal income, but not the attendance allowance.

2. – DEDUCTIONS FROM THE ALLOWANCE

Most such deductions are obligatory and linked to social welfare schemes.

Thus the following must be deducted from the gross monthly allowance:

– Contributions to the pension scheme for the first fifteen years of office	1 258,50 €
– Solidarity contribution	56,80 €
– General social contribution and contribution to the reimbursement of the social debt	568,01 €
– Contribution to the resource guarantee fund	27,57 €
– Gross monthly deduction	5 189,27 €

3. – THE CAPPING OF ALLOWANCES LINKED TO LOCAL OFFICE

In the case of a combination of the parliamentary allowance and allowances linked to other offices, the principle of a *general ceiling* was introduced by Institutional Act no. 92-175 of February 25, 1992. An M.P. with locally elected offices may only combine the allowances linked to these offices with the basis parliamentary allowance of his parliamentary office within a limit of one and a half times the latter. Such allowances have a ceiling today fixed at €2 757.34 per month for an M.P.

II. – MATERIAL MEANS AVAILABLE TO M.P.S

Certain individual means have been created to enable M.P.s to carry out their office according to their individual needs.

1. – OPERATIONAL AND SECRETARIAL EXPENSES

In order to meet the expenses linked to the exercise of their office which are not directly covered or reimbursed by the National Assembly, M.P.s have an

operational expenses allowance which increases in line with rises in civil service salaries. As of July 1, 2010, this gross monthly allowance represents €6 412.

In addition M.P.s may have a *Parliamentary staff allowance*. Although this allowance is calculated on a basis of three assistants, it may, depending on the M.P., cover anything from one to five people. The M.P. is in fact the employer: he recruits, lays off, and fixes both the work conditions and the salaries of his staff.

The allowance allotted to each M.P. is indexed to pay rises in the civil service. The monthly amount of this allocation was €9 138 as of July 1, 2009.

In the case of non-use of the entire allocation, the remainder returns to the budget of the National Assembly or may be donated by the M.P. to his political group in order to cover the salaries of those employed by the group.

2. – TRANSPORT BENEFITS

For rail travel throughout the national territory of France the National Assembly covers M.P.s' journeys on the entire national railway network (SNCF) in first class. To do this it provides each M.P. with a nominal rail card which also gives access to couchette and sleeping car services linked to travel within the borders of continental France.

For travel within Paris and the Parisian area, the National Assembly has a car-pool of around twenty vehicles with chauffeurs which the M.P.s may use subject to their availability and when such travel is linked to their position as M.P. and made to and from the *Palais Bourbon* within Paris and to airports. These vehicles are also used for travel involving official delegations and for travel required by legislative work. In addition, the National Assembly uses Parisian taxis when the car-pool is not able to fulfil all the M.P.s' requests. The expenses linked to the use of taxis in Paris or to Parisian airports by M.P.s in the performance of their office are reimbursed within an annual ceiling upon the presentation of invoices. If an M.P. requests so, the National Assembly can provide a non-transferable card giving him free access to the Parisian transport system of the RATP.

As regards air travel, the National Assembly covers each year:

– For M.P.s from continental France:

  - 80 trips between Paris and the constituency in the case of a regular air connection;
  - 12 trips in continental France, outside of the constituency.

– For overseas M.P.s:

  - An annual allocation equal to, for M.P.s from overseas departments and Mayotte, the cost of 26 trips in 'business class' between Paris and the constituency and, for overseas M.P.s elected for a community of

the Pacific, the cost of 16 trips in first class between Paris and the constituency;

- 8 trips for any destination within continental France.

– For M.P.s representing French people established outside of France:

- An annual allocation equal to, for M.P.s from the six European constituencies, the cost of 46 trips in 'business class' between Paris and the constituency and, for M.P.s from the five non-European constituencies, the cost of 30 trips in first class between Paris and the constituency;
- 8 trips for any destination within continental France.

3. – OFFICE AND COMMUNICATION MEANS

Furthermore, M.P.s have certain other material benefits aimed at making the exercise of their office easier.

a) Office

Each M.P. has an individual office in the *Palais Bourbon* or in one of its annexes.

b) Computers

M.P.s have the right to training in the use of computers and to a computer allowance. They have access to Internet, to electronic mail and to a certain number of legal and economic databases.

c) Telephone and Fax

All communications to the entire continental France and overseas territories network, as well as the member states of the European Union and mobile telephone networks, from the telephones in the M.P.s' offices in the *Palais Bourbon* are covered by the National Assembly. This is also the case for all messages transmitted by fax machines available to M.P.s.

The M.P.s may also ask to take advantage of a special communication package which covers, within the parliamentary telephone allowance, the costs of five telephone lines (land or mobile) and one internet subscription or four telephone lines and two internet subscriptions.

d) Postal Mail

All parliamentary mail, i.e. written by an M.P. in the carrying-out of his office, is covered by the National Assembly.

However, all private correspondence as well as correspondence of a general or collective nature (invitations, announcements, business cards, printed matter, tracts, brochures, newsletters etc.) is not covered by the postage allowance.

4. – FOOD EXPENSES

There are two restaurants available to M.P.s.: one is strictly reserved for them and the second enables them to invite guests. The cost is covered by the M.P.s themselves.

5. – OTHER BENEFITS

a) Family Benefit

M.P.s may also receive family benefits which are the equivalent of those paid by the general social security scheme.

b) Mutual, Differential and Decremental Insurance Allowance for Return to Work

This allowance is a specific unemployment insurance benefit which is based on that which exists for employees in the private sector as M.P.s do not, in fact, adhere to the ASSEDIC (organization managing unemployment insurance payments).

This insurance benefit has five characteristics:

1. It is paid to M.P.s who are not re-elected and who are seeking employment. This excludes all civil servants and all those who have found employment. Former M.P.s who have reached an age granting them access to an M.P.'s pension cannot claim this allowance.

2. Payment is limited to a maximum of 6 terms (3 years).

3. The allowance is decremental: the maximum allowance is equal to 100% of the parliamentary allowance for the first term (5.514,68 euros), then 70% (3.860,28 euros) for second term, 50% (2.757,34 euros) for third term, 40% (2.205,87 euros) for fourth term, 30% (1.654,40 euros) for fifth term and 20% (1.102,94 euros) for sixth term.

4. The allowance is differential: all income which a former M.P. may obtain (local office, income from assets etc.) is deducted from the allowance.

5. The allowance is solely financed by the contributions paid in each month by M.P.s still in office (€27.57) to a specific fund called the Fund for Mutual, Differential and Decremental Insurance for Return to Work for M.P.s.

Upon a proposal made by the President of the National Assembly, the *Bureau* of the Assembly decided on April 6, 2011, that the administrative, accounting and financial management of this fund would be given over, as of January 1, 2012 to the *Caisse des dépôts et consignations* (French Deposits and Consignments Fund) or CDC.

The requests for obtaining this allowance are now handled by the CDC which also carries out the payment of the allowance.

Today, there are no longer any beneficiaries of this allowance. The numbers receiving it decreased rapidly, going from around thirty at the end of the

elections of June 2007 (from July to December, 2007) to only two, two years later (from July to December 2009).

III. – PENSION AND SOCIAL SECURITY SCHEME

1. – SOCIAL SECURITY

M.P.s must be affiliated to the National Assembly social security scheme which was set up by the *Bureau* in 1948 and is managed by a committee made up of the three *Questeurs* and a representative of each of the political groups. This scheme provides sickness and maternity benefits in kind and attributes a lump sum (or allocations) in the case of death.

2. – PENSIONS

The M.P.s' pension scheme, which was set up by a resolution of the Chamber of Deputies on December 23, 1904 is funded by a contribution provided by the parliamentary allowance and by a subvention included in the budget of the National Assembly.

The last reform was dated November 3, 2010: the *Bureau* of the National Assembly took several decisions which tended to align the pension scheme with that of the civil service and which ended certain particularities notably the regime of double contributions.

A voluntary supplementary old-age pension scheme was introduced as of July 2012.

The contribution rate will now increase every year so as to reach 10.55% in 2020.

The age at which pensions rights are opened will move gradually from 60 years of age to 62 in 2016. The pension is calculated on a pro rata of the number of annual contributions made, with no minimum term of office. This number has a ceiling which is gradually being raised to reach forty-one annual contributions in 2012 and 41.25 as of 2013.

The current net monthly pension for an M.P. is €2 700. The average age at which M.P.s activate their pension is 65 years of age.

File n°18

Arrival and Reception of M.P.s

Key Points

At the beginning of each term of office, the day after the election of M.P.s and the publishing of the results, the administration of the National Assembly organizes a reception procedure for all M.P.s, whether they have been re-elected or newly elected.

This is a very important procedure both for the M.P.s and for the parliamentary civil servants who take part in it. It represents the first contact between the elected members and the administration which will assist them.

It is essential that the M.P.s, and in particular those who are newly elected, have the impression they are "awaited" by the institution of Parliament and feel "at home" in the premises of the National Assembly.

Consequently, the reception procedure has been set up in order to enable M.P.s to receive information on the organization and operation of the National Assembly and to enable the administration to gather the essential information concerning the M.P.s.

The conception and the organization of the reception are prepared by a working group which is made up of parliamentary civil servants working in the departments most concerned by the operation. This group is coordinated by the director generals under the authority of the two secretaries general.

This working group begins meeting around 18 months before the beginning of the new term of Parliament. Basing itself on the experience of previous receptions, but also attempting to improve the procedure, in particular thanks to the innovations made possible with new communication techniques, the working group, over the course of its meetings, checks the main features of the organization of the reception.

I. – PREPARATORY PROCEDURES FOR THE RECEPTION OF M.P.S

As regards the gathering of results and the providing of information to M.P.s, in particular those who have been elected for the first time, good relations with the Home Office are essential.

1. – THE GATHERING OF ELECTION RESULTS

The databases (surname, first name, date of birth, department and constituency number) concerning all the candidates are transmitted to the National Assembly by the Ministry of the Interior three weeks before the first round of the elections. This information, which is sent by digital file, is collated with the management reference system at the National Assembly so as to create a complete database for the candidates at the election.

The results are transmitted during the night of the election by means of a specially installed computer link which requires the setting-up of additional computers on top of the usual teams and material provided by the National Assembly.

The cross-referencing of the candidates' files with the names of the elected M.P.s enables the publishing of the individual M.P.s' files which will serve as the basis for the reception procedure for the new term of Parliament. These files will already contain the information which the departments of the National Assembly possess on the new M.P.s.

2. – THE DISTRIBUTION OF AN INFORMATION CIRCULAR ON THE RECEPTION

Two weeks before polling day, a letter, signed by the secretaries general of the National Assembly, is sent to Prefects requesting them to transmit to the newly elected M.P.s of their department, as soon as the results were declared, a letter signed by the President of the National Assembly which includes a memorandum providing practical information on the reception procedure at the *Palais Bourbon* and a provisional timetable for the opening of the new Parliament.

The memorandum enclosed with the letter from the President of the National Assembly contains a login and a personalized password which allows the M.P. to connect to the extranet site especially given over to the reception of M.P.s. On this site the M.P. can find general information concerning the National Assembly and the reception procedure and can fill out, if he/she so wishes, his/her individual information file thus taking some of the tedious nature away from this formality when it is carried out during the reception procedure itself.

II. – THE RECEPTION PROCEDURE

As of the day after each round of voting, elected M.P.s may come to the *Palais Bourbon* where civil servants are mobilized to welcome them. For most of them there is a very short period of time (nine days in 2012) between the second round of the general elections and the first meeting of the National Assembly.

1. – THE OPERATION OF THE RECEPTION PROCEDURE

Each M.P. is accompanied upon his entrance to the *Palais Bourbon,* by a uniformed usher. He is then directed towards a "reception" civil servant whose

job it is to process the information necessary for the M.P. to be enrolled by the National Assembly. The reason for this first contact is to complete or fill out the information file. In the case of a returning M.P. the file will usually be up-to-date and will only require checking and a signature. The same applies if the newly elected M.P. has used the possibility provided to him to fill it out by means of the extranet site. If this is not the case, the file is filled out directly on the screen.

Each M.P. then moves on to the photographic studio where he is photographed. This photograph is published on the internet site of the National Assembly in the directory entitled 'Notices and Portraits' and is used for the creation of the badge which is created on the spot and which allows the wearer to automatically pass through the security checks at the entrances to the *Palais Bourbon*. Another innovation which was introduced in 2007 allows M.P.s to be photographed on the benches of the Chamber and the photograph is immediately made available on a USB memory stick.

The M.P. is then requested to pay a visit, during the first two weeks of the new term of Parliament, to the Department of Financial and Social Management, so as to carry all the personal formalities which will enable the opening of his social protection scheme, the issuing of his pay slips and the opening of an account which will allow him to pay his assistants.

2. – DOCUMENTATION PROVIDED TO MEMBERS OF PARLIAMENT

The information provided orally to M.P.s is coupled with electronic documentation. This includes: a USB memory stick, gathering, in digitized form, a practical guide for the M.P. and which brings together all the information provided during the reception period. The text of this booklet, which has been considerably abridged by comparison with those of previous terms of Parliament, makes reference to several forms which the M.P. must return to the different departments (transport, social protection, logistics). In addition, every M.P. receives a 'hold-all' bag containing the symbols of his office; the tricolour scarf, the insignia worn during public ceremonies and usually referred to as the "barometer" on account of its shape, the cockade badge to be placed behind the windscreen of a vehicle, an M.P.'s identity card and the personal access code to the extranet site of the National Assembly.

File n°19

The President of the National Assembly

Key Points

As the fourth highest dignitary of the State, the President of the National Assembly plays an essential role in French political life.

He is elected for the term of Parliament and has many prerogatives, certain of which are listed in the Constitution. He is thus consulted by the President of the Republic in several cases (the dissolution of the National Assembly, the implementation of the special powers provided by article 16 of the Constitution) and is vested with the power of referral to the Constitutional Council of which he appoints three members.

He particularly has a preeminent role in the organisation of parliamentary work and in the chairing of debates in the public sitting.

☞ *See also files 20, 26, 36 and 69*

The President of the National Assembly plays an essential role in French political life, on account of his position within the institutions of the Republic and his essential contribution to the proper running of the National Assembly. His role has been strengthened by the Constitutional Act of July 23, 2008 and by the subsequent modification in the Rules of Procedure of the National Assembly.

This explains why the National Assembly in the Fifth Republic, as during the previous Republics, has often been presided over by high-profile politicians. The following men have been Presidents since 1958: Jacques Chaban-Delmas (1958-1969, 1978-1981 and 1986-1988), Achille Peretti (1969-1973), Edgar Faure (1973-1978), Louis Mermaz (1981-1986), Laurent Fabius (1988-1992 and 1997-2000), Henri Emmanuelli (1992-1993), Philippe Séguin (1993-1997), Raymond Forni (2000-2002), Jean-Louis Debré (2002-March 2007), Patrick Ollier (March-June 2007), Bernard Accoyer (2007-2012) and Claude Bartolone (from June 2012).

At its first sitting, the newly elected Assembly, chaired by its most senior member, elects its President. This election, which is valid for the term of the Parliament, is held by secret ballot at the rostrum. If the absolute majority of votes cast is not obtained at the first two rounds of the ballot, then a relative majority is enough at the third. In the case of a tie then the eldest candidate is elected.

I. – THE INSTITUTIONAL ROLE OF THE PRESIDENT OF THE NATIONAL ASSEMBLY AND HIS RELATIONS WITH THE OTHER PUBLIC POWERS AND BODIES

1. – COMPULSORY CONSULTATION

The President of the National Assembly must be consulted by the President of the Republic in two occasions:

– the dissolution of the National Assembly (article 12 of the Constitution);

– the implementation of emergency powers by the President of the Republic (article 16 of the Constitution).

He is also consulted by the Prime Minister when the latter seeks the holding of extra days of sitting beyond the usual one hundred and twenty days which each Assembly may hold during its normal session (article 28 of the Constitution).

2. – POWERS OF APPOINTMENT OF THE PRESIDENT OF THE NATIONAL ASSEMBLY

The President of the National Assembly appoints, at the same time as the President of the Republic and the President of the Senate, one member of the Constitutional Council at each three-yearly partial renewal of this body (article 56 of the Constitution). Since the revision of July 23, 2008, this appointment is made after the opinion of the Law Committee has been given.

According to the terms of the new version of article 65 of the Constitution, the President of the National Assembly appoints, after the opinion of the Law Committee has been given, two of the six people who will sit in the sections of the High Council of the Judiciary which have jurisdiction over judges and over public prosecutors.

In addition to the appointments he makes in accordance with the Constitution, the President of the National Assembly appoints one or several members of various councils and independent administrative authorities (the High Council for Audiovisual Matters, the Board of Directors of the Bank of France, the National Commission on Data Protection and Liberties, the Financial Markets Authority, the Regulatory Authority for Electronic Communications and Post, qualified figures working with the Defender of Rights etc.).

He also appoints, by virtue of Law n°2009-39 of January 13, 2009, one of the qualified people on the commission provided for by article 25 of the Constitution which is responsible for publicly expressing an opinion on the Government and Private Members' Bills defining the constituencies for the election of Members of the National Assembly, or modifying the distribution of the seats of Members of the National Assembly or of Senators. This appointment is made after an opinion is given by the Law Committee.

Furthermore, certain texts grant him the task of appointing one or several M.P.s to sit on bodies on which representation of the parliamentary assemblies is

provided for. This is notably the case for the Commission on Access to Administrative Documents, the Steering Committee on Employment, the High Council for Public Service Railways or the National Consultative Committee on Ethics in Life Sciences and Health.

3. – POWERS OF REFERRAL OF THE PRESIDENT OF THE NATIONAL ASSEMBLY

a) Referral to the Constitutional Council

The President of the National Assembly may refer bills to the Constitutional Council before their promulgation (article 61 of the Constitution) and may call on it to decide if an international agreement contains any clauses contrary to the Constitution (article 54 of the Constitution).

In the case of disagreement with the Government, he may call on the Constitutional Council to decide if a Members' bill or an amendment is, or is not, a matter for statute or is, or is not, contrary to a delegation of authority granted by virtue of article 38 of the Constitution (article 41 of the Constitution).

After thirty days of the exercise of emergency powers, the President of the National Assembly, may, by virtue of article 16 of the Constitution, refer the matter to the Constitutional Council so that it may decide if the conditions laid down in the same article still apply.

In accordance with the new version of article 39, paragraph 4, of the Constitution, in the case of a disagreement between the Conference of Presidents and the Government on the matter of knowing if the presentation of bills allows their inclusion on the agenda[1] of the National Assembly, the President of the National Assembly may refer the matter to the Constitutional Council which shall rule within a period of eight days.

b) Referral to other bodies

Article 39, paragraph 5 of the Constitution, introduced by the constitutional revision of July 23, 2008, allows the President of the National Assembly to submit a member's bill tabled by an M.P. for the opinion of the *Conseil d'État* before its examination in committee subject to the agreement of its author.

The President may also, by law, refer matters to:

– The Court of Budgetary and Financial Discipline;

– The National Consultative Committee on Ethics in Life Sciences and Health;

– The High Council for Audiovisual Matters;

– The Council for the Rights of Future Generations.

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1. And thus answers the conditions laid down by article 8 of the Institutional Act n°2009-403 of April 15, 2009, concerning the application of articles 34-1, 39 and 44 of the Constitution (impact study, implementation mechanisms, linking with European law etc.)

He may in addition, at the request of one of the standing committees of the National Assembly, communicate to the Defender of Rights any petition which has been referred to the National Assembly.

Moreover, article 70 of the Constitution provides that Parliament may consult the Economic, Social and Environmental Council. The President of the National Assembly used this particular prerogative for the first time in September 2009 by referring the problem of the taxing of daily allowances in the case of a work-related accident, to the said Council.

The President may also consult the Congress of New Caledonia on member's bills introducing provisions which concern it and request the High Commissioner of the Republic to make a consultative referral to the Assembly of French Polynesia on a Government or member's bill which concerns it (Institutional Laws no. 99-209, of March 19, 1999 and no. 2004-192 of February 27, 2004).

4. – CHAIRMANSHIP OF CONGRESS AND OF THE HIGH COURT

The President of the National Assembly presides over the Congress when it is called in order to carry out a constitutional revision, to ratify a membership to the European Union not submitted to referendum or when the President of the Republic takes the floor before it in accordance with article 18 of the Constitution.

When, pursuant to article 68 of the Constitution, Parliament sits as the High Court, it is presided over by the President of the National Assembly.

II. – THE ROLE OF THE PRESIDENT WITHIN THE NATIONAL ASSEMBLY

1. – ROLE CONCERNING THE TERMS AND STATUS OF M.P.S

The President of the National Assembly receives all decisions and communications which could have a bearing on M.P.s' terms of office or status:

- Decisions of the Constitutional Council concerning electoral disputes, resignations or vacant seats;
- Correspondence concerning parliamentary immunity;
- Declarations of professional activities;
- Membership of political groups and declarations regarding their membership, if that be the case, of the opposition;
- Declarations of membership of parties for the financing of public subsidies to political parties.

He must then implement the procedures provided for in such circumstances either through his own initiative or by referring the matter to the *Bureau*.

2. – CHAIRMANSHIP OF THE DECISION-MAKING BODIES OF THE ASSEMBLY

Each week, the Conference of Presidents is convened, if necessary, by the President of the National Assembly on the day and at the time which he sets. The new Rules of Procedure provide that it may also be convened by the President upon the request of a political group chairman so that it may exercise its new prerogatives: opposition to the inclusion on the agenda of a bill or to the implementation of the accelerated procedure. The President may also convene the Conference of Presidents for any other reason.

The agenda for two weeks out of four is set by the National Assembly on the proposition of the Conference of Presidents. It is the task of the President of the National Assembly to gather the various proposals for the agenda for these two weeks and to make a summary of them to the Conference.

The President convenes and presides over the *Bureau* of the National Assembly.

In accordance with the terms of article 146-2 of the Rules of Procedure, he chairs the Commission on the Assessment and Monitoring of Public Policies which was set up in 2009.

3. – ROLE OF THE PRESIDENT IN THE RUNNING OF DEBATES

As regards the chairmanship of plenary sittings, it is the President's duty:

- To open, close or adjourn the sitting;
- To chair the debates in accordance with the decisions taken by the Conference of Presidents;
- To decide the order of speaking and to give speakers the floor;
- To oversee the respect of the Rules of Procedure, as well as of constitutional or institutional provisions;
- To maintain order in the Chamber.

In the carrying out of these functions, the President may be replaced by one of the Vice Presidents of the National Assembly.

In addition, the President:

- Oversees the running of the Committees which he convenes for their constitution;
- Receives the tabling of all initiatives (Government bills, Members' bills, resolutions, motions etc.);
- Sends Government and Members' bills for examination to the relevant committee;
- Oversees the implementation of the correct procedure for written and oral questions;

– Transmits the bills which have been passed to the relevant authorities;

– He makes a decision on the financial admissibility of amendments tabled on a bill discussed in plenary sitting as soon as such amendments are tabled. This power is delegated to the Chairman of the Finance Committee.

Since the constitutional revision of July 2008, the President of the National Assembly has four new prerogatives which are linked to the legislative procedure:

– Article 39, paragraph 5 of the Constitution allows the President to refer a Member's bill tabled by an M.P. for an opinion of the *Conseil d'État*, (see above I, 3, b);

– Article 41, allows him, during the legislative procedure, to argue the inadmissibility of an amendment or of a Member's bill for not being a matter for statute;

– In accordance with article 45, paragraph 2, the President of the National Assembly and the President of the Senate, acting jointly, may, in the case of a Member's bill, call a meeting of a joint committee after two readings (a single reading if the accelerated procedure has been implemented);

– The President also monitors the subject of draft resolutions tabled by virtue of article 34-1, since a resolution may not be included on the agenda if it is on the same subject as a previously tabled resolution during the same ordinary session.

4. – OTHER ROLES OF THE PRESIDENT

a) The representative role of the National Assembly

The President of the National Assembly represents the Assembly and ensures the preservation of its interests. In order to do this he may avail of "the length of the term of Parliament" and is thus the only member of the *Bureau* who is not submitted to periodic re-election.

The Rules of Procedure of the Assembly state that "the communications of the National Assembly shall be made by the President" (article 13) and the law grants him the representation of the institution before jurisdictional bodies.

Beyond these legal aspects, it also falls within the remit of the President to embody the community of M.P.s in certain circumstances.

It is thus that he expresses in plenary sitting, the emotion of the national representation during events of particular solemnity (the death of important personalities, catastrophes, the death of soldiers or police officers etc.).

He also carries out the representation of the Assembly at official ceremonies (the ceremony of New Year's wishes of the *Bureau* to the President of the Republic) and at certain international bodies (the co-chairmanship of the

French group to the Inter-parliamentary Union, the Conference of Presidents of European Parliamentary Assemblies, the summits of the Presidents of the Parliaments of the G8/G20). He often grants interviews to Heads of State or members of foreign Governments visiting Paris.

b) The role of the President in security matters

The President of the National Assembly is in charge of the internal and external security of the National Assembly (ordinance n° 58-100 of 17 November 1958 concerning the running of parliamentary assemblies). He thus has at his disposal and under his orders, a military unit, whose responsibility it is to oversee the security of the *Palais Bourbon* and the parliamentary precincts.

File n°20

The *Bureau* of the National Assembly

Key Points

Even if the Constitution only mentions the Bureau of the National Assembly in passing (articles 26 and 89), the Bureau is nonetheless the highest collective decision-making body of the National Assembly.

By uninterrupted tradition, the Bureau has general competence, either directly or by the delegation of powers to certain of its members, over the organization and the internal running of the National Assembly.

This idea is expressed in article 14, paragraph one, of the Rules of Procedure: "The Bureau shall have complete power to run the deliberations of the House and to organize and direct departments".

☞ *See also files 16, 21, 34, 53, 58, 59, 60 and 62*

I. – COMPOSITION AND ELECTION OF THE *BUREAU*

1. – COMPOSITION

The *Bureau* is made up of 22 members:

– The President of the National Assembly, the only member to be elected for the whole term of the Parliament,

– The 6 Vice-Presidents,

– The 3 Questeurs,

– The 12 Secretaries.

In order to deal with certain decisions, delegations were formed within the *Bureau.* There are currently six such delegations:

– The delegation in charge of communication and the press;

– The delegation in charge of M.P.s' status;

– The delegation in charge of study groups and representatives of interest groups;

– The delegation in charge of international activities;

– The delegation in charge of artistic and cultural heritage;

– The delegation in charge of examining the financial admissibility of Members' bills.

Each of these delegations is chaired by one of the Vice Presidents. In addition, three of them also have as members, a *Questeur* acting in his official capacity (communication, international activities, artistic and cultural heritage). The chairman of each delegation reports to the *Bureau* on the conclusions of the delegation which he chairs.

2. – METHOD OF ELECTION

a) The Provisional Bureau

The first sitting of the Parliament is chaired by the eldest M.P. who is aided by the six youngest M.P.s who fulfil the role of Secretaries until the election of the *Bureau*. The Provisional *Bureau* only operates in order to carry out the election of the President of the National Assembly. Although no debate may take place under the chairmanship of the most senior member, it is customary for him to make a speech to his colleagues in which he shares his thoughts inspired by his experience in Parliament.

b) Election of the President of the National Assembly

The President of the National Assembly is elected by secret ballot at the rostrum. Tellers, drawn by lots, count the votes and the most senior M.P. announces the result. If an absolute majority of votes cast is not obtained at the first two rounds, a relative majority is enough at the third round; in the case of a draw, the eldest candidate is deemed elected. As soon as he is elected, the President mounts the rostrum, makes a speech and announces the date of the following sitting during which the members of the *Bureau* of the National Assembly will, themselves, be elected.

c) Election of the Vice Presidents, the Questeurs and the Secretaries

The other members of the *Bureau* (the Vice Presidents, the *Questeurs* and the Secretaries) are elected at the beginning of each term of Parliament, during the sitting which follows the election of the President and are renewed at the beginning of each ordinary session, with the exception of that preceding the renewal of the National Assembly.

The composition of the Bureau attempts to reproduce the political make-up of the National Assembly. When there is the same number of candidates as positions to be filled, no ballot is held.

After the election of the *Bureau*, the President of the National Assembly notifies the President of the Republic, the Prime Minister and the President of the Senate of its composition.

II. – THE POWERS OF THE *BUREAU*

Article 14, paragraph 1, of the Rules of Procedure states that "*The Bureau shall have complete power to run the deliberations of the House and to organize and direct departments*".

The *Bureau* represents the National Assembly at external events, interprets and applies the Rules of Procedure, rules on major incidents during sittings and ensures equality of treatment in media coverage.

1. – POWERS OF THE *BUREAU* CONCERNING LEGISLATIVE ACTIVITIES OF THE NATIONAL ASSEMBLY

a) In Plenary Sitting

In plenary sitting the President (or one of the Vice Presidents replacing him) directs the debates. He may, at any time, adjourn or end the sitting.

The Secretaries of the *Bureau* check the voting operations and the count for certain ballots: ordinary public ballots using ballot papers (in cases where the electronic voting system fails to work) public ballots at the rostrum or in the rooms adjoining the Chamber (e.g. vote on a censure motion), secret ballots for personal appointments.

b) In Parliamentary Procedure

The *Bureau* has the power to assess the financial admissibility of Members' bills upon their tabling. This power is carried out by one of its delegations. The President of the National Assembly may also refer questions of the financial admissibility of amendments to the *Bureau* although this provision is not applied.

2. – POWERS OF THE *BUREAU* CONCERNING THE ADMINISTRATIVE RUNNING OF THE NATIONAL ASSEMBLY

The *Bureau* has wide statutory powers:

– It decides upon the Internal Rules which establish the organization, the powers and the working of the departments of the National Assembly;

– It sets down the terms of application, of interpretation and of implementation of the Internal Rules by the various departments;

– It establishes the status, the retirement scheme and the social security system of the staff, as well as the terms of the relationship between the administration of the National Assembly and the professional organizations representing the personnel;

– It has a power of appointment to the highest positions in the administration of the National Assembly: it thus appoints the secretaries-general, the general directors and the directors of departments;

– Under the supervision of the *Bureau*, the *Questeurs* have responsibility for financial and administrative departments and in this capacity they

present each year the predicted budget of the Assembly ; they report to the *Bureau* on the main decisions falling within their remit and, should circumstances so require, ask it to make a decision on certain matters which in particular affect the material aspects of the status of the personnel or the means available to M.P.s and to the bodies of the National Assembly.

3. – OTHER STATUTORY POWERS OF THE *BUREAU*

So as to ensure the respect of the prohibitions mentioned in article 23 of the Rules of Procedure, which ban the forming of groups defending private, local or occupational interests, the *Bureau* approves, upon a report of its relevant delegation, the study groups which are allowed to be formed within the National Assembly.

It coordinates the international activities of the National Assembly.

In the field of communication, the *Bureau* has the final say on the conditions of production, transmission and distribution of the audiovisual account of the debates.

4. – THE CONSTITUTIONAL AND LEGISLATIVE POWERS OF THE *BUREAU*

There are several specific elements in this remit which the *Bureau* possesses on account of various constitutional and legislative provisions. To be particularly noted is:

- The system of authorization concerning custodial or semi-custodial legal measures (article 26 of the Constitution);
- The responsibility of the *Bureau* to become the *Bureau* of Congress when the latter meets in order to carry out a constitutional revision (article 89 of the Constitution);
- The verification of incompatibility with parliamentary office as laid down by the electoral code;
- The registration of M.P.s as regards their membership of parties and political groups eligible for the distribution of public subsidies, as laid down by the laws on the financing of political life;

5. – POWERS AS REGARDS APPOINTMENTS

According to the rules drawn up by the *Bureau* of the XIIIth term of Parliament on April 6, 2011, it is within the remit of the *Bureau*, upon a proposal of the President, to appoint the Commissioner for Ethical Standards after the agreement of at least one opposition group.

The *Bureau* meets around eight times a year. Each meeting leads to a publication in the Assembly bulletin and on the internet site of the Assembly, of the minutes of the decisions taken, certain of which are published in the *Journal officiel.*

File n°21

The *Questeurs*

Key Points

The term and the position of *questeur* date from the Senatus Consultum of 28 frimaire, year XII (20 December 1803). There are three *Questeurs* since the Third Republic. It is a tradition, since 1973, that two of them should come from the ranks of the Government majority and one from the opposition.

The *Questeurs* are members of and act under the authority of the *Bureau* of the National Assembly and thus of the President of the National Assembly. They "*shall be responsible for financial and administrative matters. No new expenditure shall be incurred without their prior agreement*" (Article 15, paragraph one, of the Rules of Procedure of the National Assembly). No expenditure can thus be incurred directly by any of the departments under their authority.

They are elected by their peers at the beginning of each term of Parliament, and then every year at the beginning of each ordinary session, except that which precedes the renewal of the National Assembly.

In practice, the *Questeurs* manage, by delegation of the *Bureau*, the administrative and material sides of the life of the National Assembly.

☞ *See also files 20, 67, 68, 70 and 71*

Chaired by the President, the *Bureau* is the supreme body of the National Assembly but its modest size (22 members) means it must delegate some of its powers.

The *Questeurs* are the members of the *Bureau* who, under its authority, carry out the administrative and financial management of the National Assembly

In particular they draw up the budget of the National Assembly, manage the funds and decide upon expenditure.

The position of *Questeur* illustrates the principle of administrative and financial autonomy of parliamentary assemblies set down in article 7 of the Ordinance of November 17, 1958 relative to the running of parliamentary assemblies.

I. – THE *QUESTEURS*: A COLLEGIAL BODY

1. – COMPOSITION

The *Questeurs* are three M.P.s elected by their peers at the beginning of each term of Parliament, and then every year at the beginning of each ordinary session, except that which precedes the renewal of the National Assembly. In practice there is quite a large amount of stability in the function of *Questeur*.

The *Questeurs* are a reflection of the political make-up of the National Assembly. Since 1973, two of the *Questeurs* have been members of the parliamentary majority and the third *Questeur* has been a member of the opposition.

The fact of having *Questeurs* from different political parties means that a consensus can be reached between the political groups on decisions of an administrative nature and this avoids such issues being exploited for political reasons.

2. – WORKING

The *Questeurs* meet every week during session with the two Secretaries General to discuss all the questions which fall within their remit.

The decisions of the *Questeurs* are taken collegially. The collegial nature of decisions is somewhat tempered by the existence of the notion of ‘delegated’or ‘lead’ *Questeur*. The latter is chosen by his colleagues to act in their name. Each of the three *Questeurs* carries out this responsibility in turn for a one-month period.

The General Secretariat of the *Questure* prepares the meetings of the *Questure* and in collaboration with the different departments draws up the files to be put before the *Questeurs*, writes up the minutes, records the decisions and assures their implementation and communication (in particular via the intranet site of the National Assembly).

After each meeting of the *Questure*, the Secretary General of the *Questure* and the Director General of Administrative Services, bring together the heads of departments to inform them of the decisions taken and to establish the practical aspects of their implementation.

II. – POWERS OF THE *QUESTEURS*

1. – THE *QUESTEURS* AND THE BUDGET OF THE NATIONAL ASSEMBLY

a) The Preparation of the Budget

The financial autonomy of the parliamentary assemblies allows them to fix their draft budget without the executive power intervening. The draft budget is

thus prepared and settled by the *Questeurs* and is then presented for information to the *Bureau*.

The amount of the annual allocation provided by the State to ensure the running of each parliamentary assembly is drawn up by the 'joint committee in charge of deciding credits' which is made up of the *Questeurs* of the two assemblies and is chaired by the president of a chamber of the Court of Accounts, aided by two assessorial judges acting as *rapporteurs*. The report drawn up by the *Questeurs* presenting the draft budget guidelines as set down in the previously described conditions, is then referred to the Chairman of the joint committee.

A report signed by the seven members of the joint committee and drawn up by its chairman and the assessorial judges accompanies the request for credits and outlines the reasons. It is reproduced in its entirety in the budgetary booklet for the "public powers" mission which is annexed to the year's finance bill.

The joint committee sets down the amount of the allocation requested. It is the task of the *Questeurs*, after the passing of the Finance Act in which the allocation is included, to distribute the credits between the various chapters and expenditures.

b) Implementation of the Budget

The *Questeurs* are empowered with a general delegation regarding financial and accounting matters. Expenditure may only be authorized with their agreement, except when the amount of such expenditure is relatively insubstantial. In such cases the agreement of the Secretary General of the *Questure* by proxy is sufficient.

Expenditure is examined before being approved by the *Questeurs*. Such files are prepared by the various departments of the National Assembly. If the files deal with building work or the provision of goods or services, then tenders are issued in accordance with the provisions of the code of public procurement.

The procedure of approval of such expenditure illustrates the financial autonomy of the assemblies as the *Questeurs* approve the expenditure without the agreement of a financial inspector, the civil servant who represents the executive power.

c) Monitoring the Implementation of the Budget

In the same way, the auditing and the balancing of the accounts are matters for an internal body of the National Assembly: the *ad-hoc* committee in charge of auditing and balancing the accounts, set up by article 16 of the Rules of Procedure of the National Assembly is made up of 15 members appointed to proportionally represent the political groups. Only an M.P. belonging to a group which has declared itself as in the opposition may be elected to the chairmanship. The committee is renewed each year at the beginning of the ordinary session.

The members of the Bureau and thus the *Questeurs* may not sit on this committee.

At the end of the financial year, the *Questeurs* draw up, on a proposal of the Secretary General of the *Questure*, a report for the *ad-hoc* committee on the implementation of budgetary operations, the technical preparation of which is the task of the Budget, Financial Monitoring and Markets Department.

The *Questeurs* appear before and answer for their management to the *ad-hoc* committee which is in charge of granting them discharge and of definitively approving the accounts for the financial year. The committee also gives discharge for his management to the Treasurer of the National Assembly. In the performance of its duties, the committee has substantial powers of oversight: its members may examine all payment orders and accompanying invoices and may question the *Questeurs* orally or in writing, in particular at the moment of the examination of the management of the financial year which has just ended. The Chairman of the *ad-hoc* committee draws up, every year, a report on the accounts of the previous year. This report is made public and is published on the internet site of the National Assembly.

In the framework of the certification procedure for the general accounts of the State introduced by the Institutional Law of August 1, 2001, concerning finance acts, a specific procedure has been implemented so as to reconcile the technical requirements of this certification with the autonomy of the parliamentary assemblies. The High Council of the Order of Chartered Accountants, assisted by two firms of accountant commissioners freely chosen by it, is thus tasked with carrying out a contractual audit of the accounts of the National Assembly with a view to declaring their true and fair nature in the sense of accountancy norms. The High Council is completely independent in the carry-out of this task. The certification report which is drawn up at the end of the work, including the results, the final account and the information annex which are the subject of the certification, is transmitted to the Chairman of the *ad-hoc* committee who passes it on immediately to the Court of Accounts. It is reproduced in its entirety in the aforementioned report on the accounts of the year which has just passed.

2. – THE GENERAL ADMINISTRATION OF THE NATIONAL ASSEMBLY

The *Questeurs* are expected to be aware of problems arising from the general administration of the institution. Each of the following areas partially or completely fall within their remit, under the authority of the *Bureau*: personnel management, social security systems, pensions, the maintenance of the *Palais-Bourbon*, its grounds and attached buildings, the car pool, the catering facilities, the provision of material means to their colleagues.

a) Personnel Management

The President of the National Assembly and the *Questeurs* are together in charge of personnel management (with the exception of the porters and temporary staff who fall entirely within the remit of the *Questeurs* alone). Within this area, they are in charge of all the provisions concerning the recruitment of civil servants by competitive examination, their promotion, their secondment, their leave of absence or their retirement as well as those provisions concerning disciplinary action. The *Questeurs* decide upon salary increases due to seniority but the *Bureau* is the only body which decides upon the salary index scale of the staff.

b) Powers of the Questeurs Regarding Social Security Matters

This element of the remit covers M.P.s and former M.P.s, as well as retired or present staff. The *Questeurs* are in charge of the pension scheme and are members, by right, of the Social Security Management Committee for M.P.s and former M.P.s. They have the same powers of administration for the Social Security system of the staff.

c) Security, Control of Access and Movement in the Palais Bourbon

According to article 3 of the Ordinance of November 17, 1958 and to article 13 of the Rules of Procedure of the National Assembly, the President of the National Assembly is in charge of overseeing the internal and external security of the Palais Bourbon and all the other premises of Parliament. He decides upon the size of the military force he deems necessary and this force is under his command. The President of the National Assembly may, if he so desires, delegate certain of these powers to the *Questeurs*.

d) Powers Concerning the Working of the National Assembly

The *Questeurs* are also in charge of certain tasks directly related to the working of the National Assembly. At the end of a discussion with the secretaries general of groups at the beginning of each term of Parliament, they ratify in particular the distribution of offices and meeting rooms for the secretariats of the political groups and for the M.P.s.

In addition, the *Questeurs* do all within their power to help the M.P.s in the carrying out of their office (transport, telephone, office equipment).

File n°22

Political Groups

Key Points

The political groups, which have been recognized by the Constitution since the revision of July 2008, are the formal representation of political parties and movements in the National Assembly and allow MPs to come together according to their affinities.

They are represented in the Bureau and in the standing committees proportionally, according to the number of seats they hold. The allotted time for speaking during the plenary sittings is also decided upon by the number of members they have.

The chairmen of political groups enjoy certain prerogatives within the legislative procedure. These are particularly aimed at safeguarding the rights of the Opposition.

Outside of the prerogatives of their chairmen, the opposition and minority groups have a number of recognized rights in accordance with article 51-1 of the Constitution.

☞ *See also files 23, 26, 50 and 82*

The political groups are the formal representation of political parties and movements in the National Assembly. They are nonetheless distinct from these and in fact the Rules of Procedure make provision for the setting-up and the organizing of political groups in a way which is completely autonomous from the legal system applied to political parties.

I. – RULES FOR THE SETTING-UP OF POLITICAL GROUPS

The Rules of Procedure of the National Assembly state that "*M.P.s may form groups according to their political affinities*".

To be created, a group must meet two conditions:

– It must bring together a minimum number of M.P.s. This number has been changed from twenty to fifteen in the National Assembly with the reform of the Rules of Procedure on May 27, 2009;

– It must transmit to the President's office a political statement signed by its members and put forward by the chairman they have chosen.

An M.P. may only be a member of one political group.

It is also possible, with the authorization of the *Bureau* of a group, to be a part of that group, not as a fully-fledged member but as an associated member. The associated members are not included in the minimum number necessary for the setting-up of a group but they are included in the group numbers concerning all other aspects of parliamentary life.

It is not mandatory to be a member of a group or to be associated to a group. M.P.s who are in such a position are named on the list of Members of Parliament as 'belonging to no group' and are usually referred to as 'non-enrolled'.

Changes may occur after the initial setting-up of a group. In the case of new membership or enrolment, the double signature of the chairman and the M.P. in question are required whilst in the case of resignation or expulsion only the signature of one or the other is necessary.

The Rules of Procedure also state that no group which presents itself as a group representing private, local or professional interests or which forces its members to accept a binding vote, can be created.

II. – THE INTERNAL ORGANIZATION OF POLITICAL GROUPS

The groups have the right to decide upon their own internal organization and their own procedures (they may draw up their own statutes and standing orders). The groups are serviced by an administrative secretariat which they recruit but whose conditions of access to, and working arrangements in, the National Assembly are decided upon by the *Bureau*.

The National Assembly provides the groups with a financial contribution to ensure their proper running. This contribution varies according to the number of members in the group.

Generally speaking, political groups meet at least once a week so as to decide their position on the bills on the agenda, draw up the list of their speakers, nominate their candidates to certain bodies and debate current affairs.

The importance of political groups in the life of the National Assembly is symbolized by their seating in the plenary chamber from the 'left' to the 'right' of the President's rostrum.

At the beginning of a term of Parliament, the President brings together their representatives in order to 'divide the Chamber up politically'. This in fact means the creation of sectors which will be given over to each group for the seating of their members in the Chamber. Each group then provides each of its members with a seat within the sector. This seat will then be fitted with the member's individual voting panel.

III. – THE ROLE OF POLITICAL GROUPS IN THE WORKING OF THE NATIONAL ASSEMBLY

1. – THE REPRESENTATION OF POLITICAL GROUPS IN THE *BUREAU* AND IN STANDING COMMITTEES

The groups play a role in the setting-up of the internal bodies of the National Assembly, by providing, in accordance with the legal rules and established customs, the appointments to many positions.

The *Bureau* of the National Assembly is thus elected with "*every endeavour being made to ensure that it reflects the political make-up of the Assembly*" (article 10, paragraph 2 of the Rules of Procedure) i.e. on the basis of an agreement between the groups as to the distribution of the various positions concerned (vice-presidents, *Questeurs*, secretaries). If no agreement between the groups is reached, a ballot is held.

In the standing committees the groups have a number of seats proportional to their membership, with each group free to distribute its members between the various standing committees within its quota. In the make-up of the *bureaux* of the standing committees every endeavour is made to ensure that they reflect the political make-up of the Assembly and that all the opinions of the Assembly are represented.

The participation of groups is also required in the setting-up of any body based on proportional representation (the European Affairs Committee, *ad-hoc* committees, commissions of inquiry, parliamentary offices and delegations) or in the distribution of positions based on rules respecting the pluralism of political groups (joint committees, representation in extra-parliamentary bodies, the attribution of the chairmanship of study groups and of friendship groups).

Furthermore, the chairmen of groups are *ex-officio* members of the Commission for the Assessment and Monitoring of Public Policies and of its *bureau*. Outside of its *ex-officio* members, this commission, whose composition shall ensure that every endeavour is carried out so that it reflects the political make-up of the Assembly, has fifteen seats distributed proportionally between the groups taking into account the *ex-officio* members.

2. – PARTICIPATION IN THE DEBATES IN PLENARY SITTING

The exercise of those rights concerning the work in plenary sitting, especially those concerning the speaking time, are carried out through the political groups.

This is the case when the Conference of Presidents decides on the organization of a general debate on bills, on the consideration of a bill in a set time limit or the organization of debates on Government statements or on motions of censure. In these cases an allotted speaking time is given to each

group, which then, in practice, has the responsibility of distributing it amongst the speakers it appoints.

In the same way, the organization of question time is based on the allotment of a number of questions to each group and whose management is in the hands of the group itself.

Similarly, the explanations of votes on all Government or Member's bills, with the exception of personal explanations of votes authorized during the consideration of bills when the set time limit is applied, are made through a single speech given by a representative appointed by each group.

IV. – THE PREROGATIVES OF THE PRESIDENTS OF POLITICAL GROUPS

1. – THE CONFERENCE OF PRESIDENTS

The presidents of groups are members by right of the Conference of Presidents and take part in the discussion on the drawing-up of the agenda and on the organizational measures which are associated with it. They may submit proposals to the Conference of Presidents concerning the agenda. When a vote occurs within the Conference of Presidents, quite a rare event in fact, each chairman of a political group is granted a number of votes equal to the number of members of his group (minus those who already participate in the Conference in another capacity: vice-presidents, chairmen of committees). Since the constitutional revision of July 23, 2008, as the agenda is shared between the Government and the Assembly, the political groups (and in particular the political groups belonging to the governing majority) play a decisive role in the drawing-up of the Assembly's agenda.

2. – THE PREROGATIVES OF THE PRESIDENTS OF POLITICAL GROUPS IN THE LEGISLATIVE PROCEDURE

In addition, the presidents of political groups have a substantial number of prerogatives concerning the working of the legislative procedure and the holding of plenary sittings. Thus the Rules of Procedure (or in certain cases custom) recognize their right, in particular, to:

- Ask for the setting-up of an *ad-hoc* committee (or to oppose it);
- Obtain, by right, the adjournment of a sitting in order to organize a meeting of their group;
- Hold a public ballot when they ask for it;
- Ask, personally during the sitting, for the verification of the quorum when a vote is held, on the condition that the majority of the members of their group are actually present in the Chamber;

– Require that the application of a set time limit on a bill be not less than a specific time limit set by the Conference of Presidents (thirty hours during the XIIIth term of Parliament);

– Obtain, once per session, an extension of the time for consideration of a bill which leads to the application of a set time limit along with an additional period of ten minutes per group every time an amendment is tabled outside the usual time limits by the Government or the committee;

– Oppose the application of a set time limit on a bill when its consideration on first reading occurs less than six weeks after its tabling or less than four weeks after its transmission;

– Propose the implementation of the simplified procedures for examination (or oppose such implementation);

– Have a European draft resolution become the subject of a report by the European Affairs Committee within a one-month time limit.

In addition, within the framework of the application of the set time limit, each group chairman is granted a specific speaking time which is not subtracted from his group's time.

V. – SPECIFIC RIGHTS GRANTED TO OPPOSITION AND MINORITY GROUPS

Article 51-1 of the Constitution states that "The Rules of Procedure of each House… recognize that opposition groups in the House concerned, as well as minority groups, have specific rights". For a group to obtain the status of opposition group its chairman must make a declaration to the Presidency of the National Assembly. This declaration may be made or withdrawn at any moment. However the status of a minority group is certified: the minority groups are defined as those who have not made a declaration of membership of the opposition to the Presidency, with the exception of that group which has the largest number of members.

These specific rights are attributed on the basis of the group's situation at the beginning of the term of Parliament for one year and then every year after that at the beginning of the ordinary session.

The opposition and minority groups, in particular, may take advantage of one day per month given over to an agenda set entirely by them. These sittings are divided between the opposition and the minority groups according to their numerical size with each group having at least three sittings per ordinary session.

Each opposition or minority group may also, once per ordinary session, include on the agenda of the following monitoring week, as of right, a draft resolution aimed at setting up a committee of inquiry. To be defeated, this draft resolution must be opposed by a three fifths majority of the National Assembly.

This possibility is however not available during the session immediately preceding general elections.

The opposition groups have other rights which are recognized such as the chairmanship of the Finance Committee and of the Committee in Charge of Auditing and Balancing Accounts, the allocation each week of half the questions at Government question time as well as half of the speaking time during debates subsequent to a Government declaration.

File n°23

The Place of Opposition and Minority Groups

Key Points

In July 2008, Parliament gathered in Congress, inserted a new article into the Constitution which allowed the Rules of Procedure of each assembly to determine the rights of parliamentary groups and, in particular, to recognize the "specific rights" of opposition and minority groups.

This ruling extended the efforts which had been made for several years to preserve and then strengthen the rights of the opposition.

Monitoring and Assessment are particularly favourable to such a trend: it is possible, in these areas, to counter-balance the dominance which the ruling majority holds in the legislative field in accordance with the principle of representativity.

The National Assembly has taken advantage of the possibility offered by article 51-1 of the Constitution. Its Rules of Procedure now recognize many specific rights belonging to opposition and minority groups.

☞ *See also files 22, 49, 50 and 51*

The Constitution recognizes essential prerogatives for the opposition.

It also provides that, since 1958, the opposition may make an issue of Government accountability by tabling a motion of censure (article 49 of the Constitution). It is true that only one motion of censure has been adopted since then. However, in practice, the procedure is used on a regular basis by the opposition to display its disagreement with Government policy. In this context, its interest is that it leads to the holding of a formal debate.

Since 1974, sixty M.P.s or sixty Senators can refer laws before their promulgation, to the Constitutional Council (article 61, paragraph 2 of the Constitution). This reform strengthened the place of the opposition in Parliament by allowing it to submit the ruling majority (and the Government it supports) to the respect of the fundamental law.

However, until quite recently, the ideas of ruling majority and opposition did not appear in the Constitution. The National Assembly had, indeed,

attempted to change its Rules of Procedure so as to provide a legal basis to these two notions (motion of June 7, 2006) but the Constitutional Council opposed it (Decision n°2006-537 DC of June 22, 2006).

The element which was apparently missing was established by the Constitutional Act of July 23, 2008. Since then, the new article 51-1 which was inserted into the Constitution provides that "the Rules of Procedure of each House shall determine the rights of the parliamentary groups set up within it. They shall recognize that opposition groups in the House concerned, as well as minority groups, have specific rights".

M.P.s and Senators thus made sure that the assemblies would provide specific rights to certain groups and not to others.

Thus, the National Assembly, upon the implementation of its new Rules of Procedure in June 2009, provided for better representation of all its political spectrum in the decision-making bodies of the Assembly. It also provided for the direct participation of opposition and minority groups in the activities of monitoring and assessment as well as the recognition, in their favour, of a certain number of prerogatives, including in the exercise of the legislative function.

I. – OPPOSITION AND MINORITY GROUPS

At the National Assembly, M.P.s may gather together by political affinity. Since the entry into force of the motion of May 27, 2009, a group may be constituted as of 15 members, as opposed to 20 previously. To do so, it must transmit a written political statement signed by all its members to the President of the National Assembly.

As specific rights are recognized for opposition and for minority groups, it appeared necessary to include in the Rules of Procedure a definition which would allow such groups to be identified.

This definition appears in article 19 of the Rules of Procedure. It is based on a declaratory procedure (this solution was considered as the most satisfactory and the one which best respected individual freedom) and comes directly from the very terms of the Constitution.

1. – OPPOSITION GROUPS ARE THOSE WHICH DECLARE THEMSELVES AS SUCH

Upon their constitution, groups may declare, in the political statement signed by their members which they transmit to the President, their membership of the opposition.

This statement may be made, or withdrawn, at any time. Nonetheless, it is made clear that the "specific rights", which are recognized for opposition groups and which must necessarily be granted over a period of time, are attributed or not, according to the status of the group at the beginning of each term of

Parliament and then annually at the beginning of the ordinary session, for one year.

2. – MINORITY GROUPS ARE THE OTHER GROUPS WITH THE EXCEPTION OF THE LARGEST

Minority groups are those which have not declared themselves members of the opposition with the exception of that which has the largest number of members. In concrete terms, they are the smaller groups of the governing majority or groups which are neither in the opposition nor in the governing majority.

Minority groups also have specific rights which are attributed over the same time-scale as for those of the opposition.

II. – BETTER REPRESENTATION IN THE DECISION-MAKING BODIES OF THE ASSEMBLY

"Every endeavour shall be made to ensure that the *Bureau* reflects the political make-up of the House" (article 10, paragraph 2 of the Rules of Procedure). In the XIIIth term of Parliament, opposition groups also held ten of the twenty-two positions (two of the six deputy speakers, one of the three positions of *questeur* and seven of the twelve positions of secretary). In the XIVth term, they held two of the six deputy speaker positions, one of the three *questeur* positions and six of the twelve secretary positions).

The opposition is represented in the Conference of Presidents by the chairmen of its groups and by two vice-presidents (article 47 of the Rules of Procedure) as well as by the Chairman of the Finance Committee who must belong to an opposition group (article 39 of the Rules of Procedure).

With the reform of the Rules of Procedure resulting from the motion of May 27, 2009, the representation of all political tendencies within the decision-making bodies of the Assembly has been strengthened.

1. – THE RULES OF PROCEDURE PROVIDE THE OPPOSITION WITH THE CHAIRMANSHIP OF CERTAIN BODIES

By virtue of article 39 of the Rules of Procedure, only an M.P. belonging to a group having declared itself in the opposition may be elected to the chairmanship of the Finance, General Economy and Budgetary Monitoring Committee.

As of the XIVth term of Parliament, the chairmanship of the *ad-hoc* committee in charge of checking and auditing the accounts of the National Assembly is also, automatically, granted to the opposition (article 16 of the Rules of Procedure).

2. – THE RULES OF PROCEDURE PROVIDE FOR THE REPRESENTATION OF ALL TENDENCIES WITHIN THE BODIES OF THE ASSEMBLY

This requirement of representativity has a particularly broad field of application.

It is applied, in particular, as regards the *bureaux* of legislative standing committees (four deputy chairmen and four secretaries) of which it is said that every endeavour shall be made to ensure that they reflect the political make-up of the House and represent all of its members (article 39).

An identical rule is provided for the *ad-hoc* committee in charge of checking and auditing the accounts of the National Assembly (article 16), for commissions of inquiry (article 143) and for fact-finding missions set up by the Conference of Presidents upon the request of the President of the National Assembly (article 145).

As regards fact-finding missions set up by committees, the rule is that those which are composed of two members must include one M.P. belonging to an opposition group. A mission which is composed of more than two members must make every endeavour to make sure that it reflects the political make-up of the Assembly (article 145).

The overall make-up of the Commission for the Assessment and Monitoring of public policies, a new body set up in 2009, must reproduce the political make-up of the Assembly (article 146-2). Its *bureau* must include at least one deputy chairman from the opposition.

3. – THE RULES OF PROCEDURE SUPERVISE THE BALANCE OF APPOINTMENTS MADE TO THE COMMITTEES

Every effort should be made, as of the XIVth term of Parliament, to make sure that these appointments, and in particular those of the budgetary *rapporteurs*, reflect the political make-up of the Assembly (articles 28 and 146 of the Rules of Procedure).

III. – SHARED RESPONSABILITY IN MONITORING AND ASSESSMENT ACTIVITIES

The Rules of Procedure recognize the opposition's right to take the initiative and even to pilot certain monitoring and assessment missions.

1. – A RIGHT TO REQUEST FOR COMMISSIONS OF INQUIRY

Commissions of inquiry have, for some time now, provided the opposition with efficient means of information and monitoring, in particular thanks to the broadening of their powers of investigation since 1977 and to the public nature of their hearings since 1991.

The motion of May 27, 2009, provides, among other things, that each opposition or minority group chairman may request, once per ordinary session, (with the exception of that preceding the renewal of the Assembly), during the Conference of Presidents, that a debate on a draft motion aiming at the setting-up of a commission of inquiry be automatically included on the agenda of a sitting during the first week of monitoring and assessment.

A request for the setting-up of a commission of inquiry which is made in the framework of this procedure may only be rejected if three-fifths of the members of the Assembly vote against it.

2. – THE POSITIONS OF CHAIRMAN OR *RAPPORTEUR* OF A COMMISSION OF INQUIRY OR OF A FACT-FINDING MISSION ARE SHARED

Since 2003, the Rules of Procedure of the National Assembly provide that the positions of chairman or of *rapporteur* are to be held automatically by a member of the group of which the first signatory of the draft resolution which led to the setting-up of the commission belongs. In addition, commissions of inquiry have always been composed proportionally according to group size; this practice, which was the result of a compromise, was included in the Rules of Procedure in 1991.

Now that the existence of opposition groups has been included in the Rules of Procedure, it has become possible to have a specific mention of the rule of the sharing of the positions of chairman and *rapporteur*.

Thus, as regards commissions of inquiry, it is provided that one of these two positions will be held automatically by an M.P. belonging to an opposition group. When the commission of inquiry has been created on the basis of the "right to a turn" procedure, one of these two positions is automatically held by a member of the group which has called for the commission (article 143): this is particularly the case when a commission is set up on the initiative of a minority group.

A similar provision was included in article 145 of the Rules of Procedure concerning fact-finding missions set up by the Conference of Presidents: the position of chairman or *rapporteur* is automatically held by an M.P. of the opposition if these positions are not carried out by the same person.

3. – THE DISTRIBUTION BETWEEN RULING MAJORITY AND OPPOSITION IS THE RULE FOR THE ACTIVITIES OF THE COMMISSION FOR THE ASSESSMENT AND MONITORING OF PUBLIC POLICIES

Once per ordinary session, each group may automatically carry out an assessment report in the framework of the Commission for the Assessment and Monitoring of Public Policies (CEC).

In addition, the Rules of Procedure provide that once the work programme has been decided upon, the commission should appoint two *rapporteurs*, from

among the members chosen by the committees to take part in the assessment, or from amongst its own members: one of these two *rapporteurs* must belong to an opposition group (article 146-3).

From this point of view, the rules which apply to the CEC have been borrowed from those within the Assessment and Monitoring Mission (MEC), set up in 1999 by the Finance Committee, and within the Assessment and Monitoring Mission for Social Security Financing Laws (MECSS), set up in 2004 by the Cultural, Family and Social Affairs Committee.

4. – THE FOLLOW-UP OF THE IMPLEMENTATION OF LAWS IS GIVEN TO RULING MAJORITY-OPPOSITION PAIRS

At the end of a period of six months following the entry into force of a law whose implementation requires the publication of regulatory decisions, a report on the implementation must be presented to the relevant committee. This report describes the regulations which have been published and the decrees which have been issued in order to implement the said law, as well as the provisions which have not been subject to the necessary implementation instruments.

Since the motion of May 27, 2009, the Rules of Procedure provide that this report be presented by two M.P.s, one of whom must belong to an opposition group (article 145-7).

IV. – THE RIGHTS OF THE OPPOSITION AND MINORITY GROUPS IN PLENARY SITTING

The rights of the opposition are also applied in plenary sitting and, in the legislative field, they fit in with the idea that there is a majority supporting the Government.

1. – THE SHARING OF MONITORING AND ASSESSMENT ACTIVITIES CONTINUES IN THE CHAMBER

Article 48 of the Rules of Procedure provides that each opposition or minority group chairman automatically obtains the inclusion of an assessment or monitoring subject on the agenda of the week now given over to the carrying out of this mission by article 48, paragraph 4 of the Constitution.

In the case of questions (which are procedures involving direct dialogue that have become a major element in monitoring and assessment), the rules concerning the involvement of all political tendencies are very precise:

– Every week, half of the questions to the Government are asked by opposition M.P.s. In addition, the first question is automatically allotted to an opposition or minority group or else to an M.P. belonging to no group;

– Half of the oral questions without debate are asked by M.P.s who are members of an opposition group.

The Conference of Presidents decided to apply the same rule of sharing to sittings involving "questions to a minister" which are held during the week of monitoring and assessment.

2. – THE SHARING OF SPEAKING TIME IS PROVIDED FOR DURING THE MAIN DEBATES

Article 132 of the Rules of Procedure provides that, during debates which give rise to Government statements made on the basis of the new article 50-1 of the Constitution (statements which may be followed by a vote without them becoming an issue of confidence for the Government), half the time provided to groups is allotted to opposition groups. The time allotted to opposition groups, on the one hand, and to other groups, on the other hand, is then divided between them proportionally according to their size.

This rule also applies to debates held, in accordance with the first paragraph of article 49 of the Constitution, when the Prime Minister makes the Government's programme or a statement of general policy, an issue of confidence in the Government (article 152 of the Rules of Procedure).

3. – ONE DAY OF SITTING PER MONTH IS RESERVED FOR OPPOSITION AND MINORITY GROUPS

Since the constitutional revision of July 23, 2008, article 48 of the Constitution provides that "one day of sitting per month shall be given over to an agenda determined by each House upon the initiative of the opposition groups in the relevant House, as well as upon that of the minority groups".

The impact of this provision is important since the former wording of article 48 (resulting from the constitutional reform of August 1995) only gave over one sitting per month to an agenda set by each assembly, even if that particular practice had doubled the number of such sittings. In addition, no right was guaranteed to opposition and minority groups who, in practice, controlled only 8 sittings per year in comparison with 27.

In article 48, the Rules of Procedure made the mechanisms for the application of this new provision clear:

– The sittings are distributed, at the beginning of each ordinary session, between the opposition groups and the minority groups proportionally according to their size;

– Each of these groups has at least three sittings per ordinary session. They are not necessarily held the same day;

– The Conference of Presidents draws up, once a month, the agenda for the day of sitting given over to opposition and minority groups;

– The opposition and minority groups explicit the matters they wish to see included on the agenda of this day, at the latest at the Conference of Presidents which follows the previous such reserved sitting day.

The group chairmen can decide to include on the agenda, the discussion of a Member's bill, the consideration of a motion or a debate.

4. – THE RIGHT TO SPEAK OF ALL GROUPS IS GUARANTEED DURING LEGISLATIVE DEBATES

The National Assembly has decided to introduce a "Set Time Limit Debate Procedure" which fixes the time periods for the examination of bills in plenary sitting so as to enable better organization of the debates, as is the case in many foreign parliaments.

The implementation of this reform is based on mechanisms which guarantee the right to speak for all groups and in particular for the opposition and minority groups.

These guarantees which appear in article 49 of the new Rules of Procedure, number five in all:

– The rules concerning the allotment of time are not the same for the governing majority and for the opposition. Thus it is provided that the minimum time allotted to each group must be longer for the opposition groups. Furthermore, 60% of additional time is allotted to opposition groups and is divided among them proportionally according to their size;

– The speeches of all group chairmen are not counted in the pre-set time limit if they do not exceed one hour per group chairman. When the overall time allotted between groups is more than forty hours, this limit is raised to two hours;

– The chairman of any group may automatically obtain "extended set debate time", equal to a minimum length set by the Conference of Presidents (30 hours at the moment);

– Once per session, a group chairman may automatically obtain "extraordinary set debate time" (50 hours at the moment);

– When the discussion of a bill on first reading occurs less than six weeks after its tabling or less than four weeks after its transmission, a group chairman can avoid the implementation of the Set Time Limit Debate Procedure.

File n°24

Standing Committees

Key Points

As the essential working bodies of the National Assembly, the standing committees have a double role:

– To prepare the legislative debate in plenary sitting;

– To inform the National Assembly and monitor the Government.

In their efforts to set up a form of rationalized parliamentarianism, the framers of the 1958 Constitution attempted to strictly limit the role and influence of the standing committees (in particular by restricting the number of standing committees to six).

The practical reality has not fulfilled their expectations. Today the work of the standing committees represents an important contribution to the drawing-up of the law. The constitutional revision of July 23, 2008, drew the necessary conclusions from this development and introduced rules whereby the bills debated in plenary sitting are those which emanate from the work in committee and the maximum number of standing committees was increased from six to eight.

In addition, various constitutional and statutory revisions have provided the standing committees with much more varied means of monitoring governmental action and have increased the publicity surrounding their work.

☞ *See also files 32, 33, 34, 35, 37, 40, 48, 49, 50, 51, 56 and 73*

Being the essential working bodies of the National Assembly, the main role of the standing committees is to prepare the legislative debate in plenary sitting. The importance of their role was strengthened by the constitutional revision of July 23, 2008, which introduced rules whereby the bills debated in plenary sitting are those which emanate from the work in committee

However, far from confining themselves to this role, the standing committees have been extending their sphere of influence, much like in many other parliaments, to activities in other areas, including keeping the National Assembly informed and monitoring the Government.

I. – THE COMMITTEES: WHERE THE LEGISLATIVE DEBATE IN PLENARY SITTING IS PREPARED

1. – NUMBER AND POWERS OF THE COMMITTEES

The framers of the Constitution of 1958 attempted to strictly limit the influence of the standing committees. This explains:

– The stress placed by the Constitution itself on the number of standing committees. This number was limited to six and was thus distinctly lower than that in the other parliaments of the European Union. This clearly marked a break with the practice of the Fourth Republic with its 18 committees;

– The determination to make referral to an *ad-hoc* committee the rule and referral to a standing committee the exception (see the original wording of article 43 of the Constitution which provided that Government and Members' bills were sent for examination to an *ad-hoc* committee specially set up for that purpose or if this were not the case, then to one of the six standing committees). Parliamentary practice however did not follow this provision, because the *ad-hoc* committees proved difficult to handle for a variety of reasons. (For the Government there was the loss of the reference points of the standing committees as well as the fact that the standing committees operated in parallel. In addition, the standing committees themselves put a break on the setting-up of a body which usurped part of their prerogatives whilst the whole legislative procedure was slowed down by the fact that, as an *ad-hoc* committee ceased to exist once the bill referred to it had been passed, it was in its interest to extend the period of examination of said bill).

The constitutional revision of July 23, 2008, increased the maximum number of standing committees from six to eight and, so as to consecrate a common practice, made referral of a bill to a standing committee the rule and the setting-up of an *ad-hoc* committee, the exception.

Article 36 of the Rules of Procedure of the National Assembly which states the names and the areas of responsibility of the standing committees was thus modified accordingly. The increase from six to eight committees was introduced by dividing the two committees which each represented a quarter of the members of the Assembly: the Cultural, Family and Social Affairs Committee and the Economic, Environmental and Regional Planning Committee. The result is a more even distribution of M.P.s between the eight committees, so that each committee is now composed of one eighth of the members of the Assembly (i.e. 72):

– Cultural and Education Affairs Committee

– Economic Affairs Committee

– Foreign Affairs Committee

– Social Affairs Committee

– National Defence and Armed Forces Committee

– Sustainable Development, Spatial and Regional Planning Committee

– Finance, General Economy and Budgetary Monitoring Committee

– Constitutional Acts, Legislation and General Administration Committee

As before, each M.P. may only be a member of one standing committee.

2. – SETTING-UP AND WORKING OF THE COMMITTEES

At the beginning of each term of Parliament, and from then on, every year at the beginning of the ordinary session, the National Assembly appoints, on the basis of the proportional representation of the political groups and upon the nomination of the chairmen of these groups, the members of the standing committees. Each committee then appoints a *bureau* to run it. This *bureau* is made up of a chairman, four deputy chairmen and four secretaries. The Finance Committee also appoints a general *rapporteur* and may only elect as its chairman, a member of an opposition group. The make-up of the *bureau* of each committee ensures that every endeavour is carried out so that it reflects the political make-up of the Assembly and represents all its opinions.

Each committee has at its disposal:

– Its own meeting room with a public address system and the equipment necessary for the digital recording of debates (this is an essential guarantee in case the minutes are contested);

– Its own team of parliamentary civil servants led by a head of secretariat. The committee secretariats are thus staffed by 56 advisers (as opposed to 16 at the beginning of the Fifth Republic);

– A monitoring and legislative studies unit (except for the defence and foreign affairs committees which have the support of the other units in the International and Defence Affairs Department) which provides support, in particular, for the monitoring missions of the committees. These units are staffed by 33 advisers. In all, the secretariats of standing committees and the monitoring and legislative studies units are staffed by 191 civil servants[1];

– Specific financial means allowing it, for example, to cover travel expenses and study costs.

The standing committees are extremely active and this is borne out by the following data pertaining to the 2010-2011 session:

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1. This does not include the secretariats of the Parliamentary Office for Scientific and Technological Assessment, of the International Parliamentary Assemblies Unit and of the Inter-parliamentary Cooperation Unit as well as the whole of the European Affairs Department.

– 639 meetings making up a total of 1,049 hours (of which 209 hours were given over to the budget debate);

– 517 hearings (including 104 of members of Government);

– 304 reports filed (including 172 legislative reports).

The standing committees face one major challenge: time. They do not, in principle, sit at the same time as the plenary sitting of the National Assembly is taking place, except to complete the consideration of a bill on the agenda, in accordance with the first paragraph of article 41 of the Rules of Procedure. This principle is, however, very difficult to respect, especially since the introduction of the single ordinary session (in 1995) which has concentrated the plenary sittings on three days (Tuesday, Wednesday and Thursday). Wednesday morning is reserved for committee work. Almost all committee meetings take place on Tuesday afternoon and on Wednesday.

However the most difficult time limit is, without doubt, that imposed by the agenda. In order to alleviate this difficulty, the constitutional revision of July 23, 2008 introduced the requirement of a period of six weeks between the tabling of a bill and its consideration on initial reading before the first Assembly to which it is referred and then a further four-week period between the transmission of the bill and its examination on initial reading before the second House. The committee is thus, in principle, ensured of having the necessary time to carry out its working meetings and its hearings, with that of the minister in charge of presenting the bill being a priority. These time periods do not apply however when the accelerated procedure is implemented by the Government. Nor do they apply to finance or social security financing bills. This is also the case for bills pertaining to states of crisis.

3. – REFERRAL TO COMMITTEE

a) Ad-hoc *Committee or Standing Committee?*

The constitutional revision of July 23, 2008 reversed the idea introduced at the beginning of the Fifth Republic which aimed at decreasing the power of the standing committees by privileging the consideration of bills by *ad-hoc* committees. The new wording of article 43 of the Constitution in taking note of the practice, established the rule of referral of a bill (tabled either by Government or by one or more M.P.s) to a standing committee and made referral to an *ad-hoc* committee, the exception.

Nonetheless the setting-up, as of right, of an *ad-hoc* committee remains possible if the Government requests it or if such a request is made by one or several political group chairmen, if the overall membership of the group or groups concerned, is equal to the absolute majority of members of the National Assembly. (However, this request cannot be made in the case of finance bills).

In other cases, when the request for the setting-up of a select committee comes from a standing committee, a political group chairman or fifteen M.P.s, it is considered passed unless there is opposition from the Government, the chairman of a standing committee or the president of a political group. In the case of opposition, the decision lies with the National Assembly.

In practice, almost all bills are sent to a standing committee (since 2002 only 9 texts have been examined by an *ad-hoc* committee). If there is a conflict between two standing committees concerning areas of responsibility, the final decision lies with the National Assembly. This is a very rare occurrence as the last example dates back to 1979.

b) Referral to Committee for Opinion (Consultative Committees)

The almost total absence of conflict regarding areas of responsibility can be explained partly by the flexibility of the procedure of referral for opinion which allows each standing committee to express its view on all or on a part of a text which has been sent for examination to another standing committee.

Thus, every year, in the case of the finance bill which is sent to the Finance committee for examination, the seven other standing committees give their opinion.

Nonetheless, outside of the finance bill, the procedure of 'referral for opinion' is rarely used: there were only 17 cases of its implementation during the 2010-2011 session. This lack of use can be explained by several reasons:

- The 'frustrating' nature of the referral for opinion procedure. For the committee and its *rapporteur* it represents a relatively large amount of work for an often relatively inconsequential result;
- The possibility which is now granted to M.P.s who are not members of a committee to attend the work of another committee (in the past only the *rapporteur* appointed to give his opinion could attend with a consultative voice);
- It is not entirely unlikely that the new constitutional rule concerning the examination in plenary sitting of the bill emanating from the work of the lead committee, combined with the new provision of the Rules of Procedure which states that a consultative committee must meet before the lead committee, so as to present its amendments to it, may contribute in practice to the decreasing in interest for the referral for opinion procedure.

4. – CARRYING OUT COMMITTEE RESPONSIBILITIES IN LEGISLATIVE MATTERS

a) A New Place for the Committees in the Legislative Procedure

The constitutional revision of July 23, 2008 modified article 42 of the Constitution so that as of March 1, 2009, the consideration of Government and

Members' bills, in plenary sitting, would be on the text passed by the lead committee (this rule previously only applied to the examination of a Member's bill on first reading before the first assembly to which it was referred). Thus it is now only in cases where a committee cannot produce a text, either because it has rejected it or because it has not been able to complete the examination of the text in time, that the bill discussed in plenary sitting will that initially referred to the Assembly.

This new rule has introduced a substantial change in the place and the role of the committees in the legislative procedure. From now on, the amendments adopted by the lead committee will be integrated into the bill discussed in plenary sitting and no longer have to be presented, discussed and adopted during that sitting. As a result, if M.P.s wish to attack the position adopted by the lead committee, they must table an amendment in the opposite direction during the plenary sitting. This inverted discussion procedure has consequences not only for all the parliamentarians but also for the Government which no longer controls, as before, the basis for the discussion in plenary sitting.

An exception to this new examination rule was nonetheless provided for in paragraph 2 of article 42 of the Constitution. This concerns constitutional revision bills, finance bills and social security financing bills. The discussion of such bills in plenary sitting, on first reading before the first assembly to which they have been referred, will be on the text tabled by the Government and on subsequent readings, on the bill transmitted by the other Assembly.

b) The Work of the Rapporteur

For each Government or Private Members' bill, the relevant committee appoints a *rapporteur* amongst its members.

The *rapporteur* has no specific powers of investigation. The only members who have the power to examine all documents required are the special *rapporteurs* i.e. members of the Finance Committee in charge of examining the budgets of a specific minister, the Chairman and the General *Rapporteur* of the Finance Committee, who is in charge of the examination of the whole finance bill, the Chairman of the Social Affairs Committee, the Chairman of the Assessment and Monitoring Mission for Social Security Financing Laws and the *rapporteurs* of the Social Affairs Committee in charge of the social security financing bill.

With the help of parliamentary civil servants made available to him, the *rapporteur* has a double task:

- An assessment mission which leads to the filing of a report;
- A proposal mission which leads to the introduction of amendments;
- Since the revision of the Rules of Procedure, the hearings of the *rapporteur* are systematically open to all members of the committee. The *rapporteur* of the lead committee is obliged, in addition, to communicate

to his fellow committee members a document which describes the state of his work during the week which precedes the consideration of the bill in committee since the time period between the tabling and the examination of the bill in plenary sitting is six weeks.

c) The Examination of Texts in Committee

The examination of the report by the committee closely resembles the procedure followed in plenary sitting.

It usually begins with a general debate, sometimes preceded by or even replaced by, the interviewing of the relevant minister. No procedural motions may be introduced at this stage. The committee then moves to the examination of the text, article by article, as well as all the amendments, including those introduced by M.P.s who are not members of the committee. The amendments adopted by a consultative committee are tabled by its *rapporteur* before the lead committee. The chairman of the committee ensures the conformity to article 40 of the Constitution (financial admissibility) of the amendments tabled in committee, if necessary after having consulted the Chairman of the Finance Committee, so as to avoid the committee introducing inadmissible provisions into the text to be discussed in plenary sitting.

In principle, the Government may attend this examination, but, in practice, this possibility was rarely used until the entry into force, on March 1, 2009, of the constitutional provision introducing the examination in plenary sitting of the bill emanating from the work of the committee. Since then, a member of the Government is usually present at the examination in committee of Government bills, even if the procedures for his participation in the debate are quite variable. Certain ministers do not hesitate to speak quite often whilst others limit themselves to giving their opinion only when the committee asks for it.

The committee debate finishes with a vote on the entire text. The report of the committee, which recaps all the work, concludes therefore with an adoption with amendments, with the original text or with a rejection of the Government or Member's bill.

d) The Prerogatives of Committees in Plenary Sitting

In plenary sitting, the committee is represented by its chairman and by its *rapporteur*. In his presentation, the *rapporteur* is the spokesman of the committee and he must defend its opinions, even if they are the opposite of his own, which he can nonetheless express "in his personal capacity". The *rapporteur* expresses the position of the committee on each of the amendments submitted to the National Assembly.

The chairman and the *rapporteur* of the committee responsible for the bill have one particular privilege: they may speak in plenary sitting when they wish. When a set time limit is fixed for the discussion of a bill, by virtue of article 49

of the Rules of Procedure, their speaking time is not deducted and nor is that of any consultative *rapporteurs.*

In addition, they may, by right, request an adjournment of the sitting, a public ballot, a deferment of the debate or a second deliberation.

II. – EXTENSION OF THE ROLE OF STANDING COMMITTEES

1. – THE REINFORCEMENT OF INFORMATION AND MONITORING ACTIVITIES

Article 145 of the Rules of Procedure of the National Assembly states that the standing committees must keep the National Assembly informed so as to allow it to carry out its function of monitoring Government policy.

Although the power of the standing committees concerning monitoring remained almost dormant for a long time, it has since the middle of the 1990s become more and more frequently used.

a) Hearings in Committee

Hearings in committee, and in particular, interviews of ministers, have become a traditional and privileged method of working for the standing committees.

Since the Law of June 14, 1996, the committees have also been given the right to call for interview any person they so wish (the fact of not replying to such a summons being punishable by a €7 500 fine) whilst taking into account, on the one hand, subjects of a secret nature concerning national defence, foreign affairs and the internal or external security of the State and, on the other hand, the respect of the principle of the separation of the legal authority and the other powers.

b) Temporary Fact-finding Missions

The temporary fact-finding missions, which are set up within each committee and are sometimes shared by several committees, have become more and more numerous since 1990. Their work leads to the publication of information reports. In addition, since 1996, such missions may take on the powers of investigation enjoyed by the commissions of inquiry, in the case of a specific mission which does not exceed six months. The popularity of such missions (more than thirty are established each year) is mainly due to the lack of formality required in their setting-up. Henceforth, they must include members of the opposition (article 145 of the Rules of Procedure).

c) Assessment and Monitoring Missions

Since 1999, within the Finance Committee, there has been an Assessment and Monitoring Mission (MEC) based on the *National Audit Office* of the British Parliament. Every year it carries out an assessment of public policies through its

work on various topics predetermined by the *Bureau* of the Finance Committee. It is co-chaired by a member of the governing majority and a member of the opposition.

In order to better monitor the financing of the social security system, the Cultural, Family and Social Affairs Committee created an Assessment and Monitoring Mission on the laws governing the financing of social security, in 2004. This mission was based on the MEC and began its work in January 2005. It usually carries out studies on several themes each year.

Usually, these two missions work in close cooperation with the Court of Accounts.

d) Law Implementation Reports

Since 2004, the *rapporteur* of a law requiring the publication of regulatory texts presents an implementation report to the relevant committee, at the end of a six-month period following the coming into force of said law. This report describes the current situation regarding the necessary implementation regulations. There have been 119 implementation reports since November 2004, of which 91 were published during the XIIIth term of Parliament (2007-2012).

The implementation reports on laws are not always restricted to this kind of follow-up of regulatory texts but may also lead to an assessment of the legislative provisions which have been passed. At the end of his work, the *rapporteur* presents his conclusions to the relevant committee, in the presence of the member of the Government concerned. The latter may, if necessary, give the reasons for the delay in the publication of certain implementation regulations and point out the problems encountered in the application of the law.

So as to provide such work with greater impact in the monitoring and assessment field, the reform of the Rules of Procedure of May 27, 2009 created an obligation for the appointment of two *rapporteurs* for each implementation report, one of whom has to be an M.P. of the opposition.

2. – COMMITTEES AND THE EUROPEAN NORMATIVE APPARATUS

Since 1992, the Government has submitted to the National Assembly and to the Senate the proposals for Community instruments with provisions of a legislative nature. This transmission has since been extended to all draft European instruments regardless of whether they contain provisions of a legislative nature or not.

The European Affairs Committee, previously called the Delegation for the European Union, files, as it thinks fit, reports, generally accompanied by motions for resolution on certain of these instruments.

Until the reform of the Rules of Procedure on May 27, 2009, the motions for resolution on Community instruments (including those tabled individually by M.P.s) were examined by the relevant standing committee. If, within eight days

of the distribution of the committee's report, the Government, a political group chairman, a committee chairman or the chairman of the Delegation for the European Union, had not requested its inclusion on the agenda in plenary sitting, the resolution was considered adopted. This procedure thus formalised the position of the National Assembly on the resolution for a Community instrument.

Henceforth motions for resolution on European Union instruments are first of all examined by the European Affairs Committee. The text which emerges from this examination is then referred to a standing committee which is considered to have passed it without modification unless it examines it within one month. If there is no request to include the motion for resolution on the agenda of the plenary sitting within fifteen days following its adoption (positive or tacit) by the lead committee, then the motion is considered carried.

3. – MODIFICATION OF THE RULES CONCERNING THE PUBLIC NATURE OF COMMITTEE PROCEEDINGS

Until 1994 the public nature of committee proceedings was limited to the publication of the analytical minutes which were released as quickly as possible (usually the day after the meeting).

In 1994, the public nature of the proceedings was strengthened as the *Bureau* of a committee can now decide to open meetings, during which interviews are carried out, to the press. M.P.s who are not members of the committee may also, without taking part in the votes, attend meetings and take the floor during them. This is also the case for the Government.

The rules concerning the public nature of the proceedings were even further strengthened by the reform of the Rules of Procedure on May 27, 2009. This reform provided the *bureau* of each standing committee the task of organizing the public nature of its proceedings as it so wished. The *bureau* of each committee may, in particular, decide to produce an audiovisual report of its works. In addition, the minutes of the committee proceedings are now drawn up mostly by a specific department (the Committee Report Department). Thus the obligation put forward by the Constitutional Council "*that a precise report of speeches made in committees, of the reasons for the modifications proposed to bills referred to committees and of the votes cast in committees, be drawn up*" has indeed been met.

File n°25

The Rhythm of Sessions and Sittings

Key Points

Time at the French Parliament is measured in three different categories: the parliamentary term, which, unless there is a dissolution, lasts five years, the session and the sitting.

Session refers to the period of the year when the Parliament meets to deliberate in plenary sitting. Since the constitutional reform of August 4, 1995, a single nine-month session has replaced the previous rhythm of two three-month sessions which had been in operation from 1958.

The rhythm of sessions – ordinary, extraordinary and sessions as of right – is laid down by the Constitution, which also determines the maximum number of days of sitting to be held during the different types of session.

However, the assemblies themselves decide the weeks of sitting, as well as the days and the timetable.

☞ *See also files 26, 27 and 36*

I. – THE RHYTHM OF SESSIONS

According to article 28 of the 1958 Constitution, (in its revised version since the constitutional amendment of 1995), Parliament shall convene as of right in one ordinary session. Upon the request of the Prime Minister or of a majority of members of the National Assembly, it may be convened in extraordinary session, which is opened and closed by decree of the President of the Republic (articles 29 and 30 of the Constitution). In addition, exceptional circumstances may occur during the recess and require the holding of sittings of the National Assembly and of the Senate (e.g. the implementation of emergency powers according to article 16 of the Constitution or the gathering to listen to a message from the President of the Republic). The National Assembly is also convened, as of right, after the general elections following a dissolution.

Outside of these periods, which are specifically set down by the Constitution, the assemblies may not hold plenary sittings and may not pass any laws. However nothing bars their internal bodies, in particular the standing committees, from meeting in order to prepare the legislative work for the following session or to carry out their job of monitoring the Government.

1. – ORDINARY SESSION

a) The origins of the Constitutional Revision of 1995

In its previous version, the 1958 Constitution made provision for two ordinary sessions of about three months each: the first in the autumn, lasting ninety days from October 2 and the second in the spring, lasting ninety days from April 2[1]. The two were separated by parliamentary recesses. The opening of the ordinary session in April was the reference point which marked the beginning of the new term of Parliament, except in the case of dissolution ("The powers of the National Assembly expire upon the opening of the fifth ordinary session in April following its election").

By instituting a single nine-month session, the 1995 constitutional revision had a double objective:

- To strengthen the importance of the parliamentary assemblies within the institutions, by allowing them to carry out their monitoring role over Government and also over the institutions of the European Union, in a more continuous fashion;
- To adapt the rhythm of the meetings of Parliament to the requirements of the legislative work. From 1958, the number of days of sitting of the National Assembly had continued to increase almost systematically (from 90 between 1959 and 1970, it had reached 100 by 1971 and was more than 150 in 1982). The narrowness of the time limits imposed by the Constitution had led to the implementation of compensatory measures or practices. The number of night sittings and especially extraordinary sessions had increased substantially (between 1958 and 1995, Parliament was summoned 60 times for sessions which were becoming less and less 'extraordinary'. Of these 60 extraordinary sessions, 59 were convened upon the request of the Prime Minister).

b) The Single Session

The Congress, gathered at Versailles on July 31, 1995, adopted the following text: "Parliament shall sit as of right in one ordinary session which shall start on the first working day of October and shall end on the last working day of June".

Nevertheless, in order to avoid the situation where the move to the single session might increase the trend towards 'legislative inflation' which had been denounced by the parliamentarians themselves, but also by such institutions as the *Conseil d'État*, or the Constitutional Council, the 1995 constitutional revision placed a limit of 120 on the number of days of sitting during which each assembly could meet in the normal course of a session. The holding of additional

1. In its original version, amended on December 30, 1963, the Constitution made provision for the spring session to open on the last Tuesday of April.

days of sitting may however be decided by the Prime Minister, after consultation with the President of the relevant assembly, or by a majority of the members of each assembly. The limit of 120 days was exceeded for the first time during the 2008-09 parliamentary session.

The length of the ordinary session is not affected by the expiry of the powers of the National Assembly, whether this be upon the reaching of the end of its normal term on "the *third Tuesday in June of the fifth year following its election*" (article L.O. 121 of the electoral code), or upon its dissolution by the President of the Republic in accordance with article 12 of the Constitution. The closing of a session, either ordinary or extraordinary, and the limit on the number of days of sitting should not prevent Parliament and in particular the National Assembly, from carrying out the most essential of its prerogatives. This is why article 51 of the Constitution makes provision for this closing to be postponed or for additional sittings to be held by right, to allow the National Assembly to make Government accountability an issue of confidence.

Likewise in accordance with article 26 of the Constitution, the National Assembly and the Senate must be able to continue their proceedings beyond the 120-day sitting limit, in order to decide upon the suspension of the detention, of the subjection to custodial or semi-custodial measures, or of the prosecution, of one of their members.

2. – EXTRAORDINARY SESSIONS

Parliament shall convene in extraordinary session, at the request of the Prime Minister or of the majority of the members of the National Assembly, to consider a specific agenda (article 29, paragraph one, of the Constitution). Extraordinary sessions shall be opened and closed by decree of the President of the Republic (article 30).

Where an extraordinary session is held at the request of the majority of M.P.s, the decree closing it shall take effect once Parliament has dealt with the agenda for which it was convened, or twelve days after the opening of the session, whichever shall be the earlier.

Institutional practice has in fact made the right to convene Parliament in extraordinary session a discretionary power of the President of the Republic. The President is not required to follow the proposal of the Prime Minister or of the majority of M.P.s. In practice, since the beginning of the Fifth Republic, only one extraordinary session has been called at the request of a majority of M.P.s: the session from 14-16 March 1979, which dealt with two draft resolutions calling for the setting-up of commissions of inquiry on the employment situation and the conditions concerning public information.

Only the Prime Minister may request a new session before the end of the month following the decree closing an extraordinary session.

In practice, both the National Assembly and the Senate are convened but it has happened in the past that the agenda of the extraordinary session has only concerned one of the two assemblies.

The introduction of the single session system has not brought an end to the increase in the number of extraordinary sessions. Thus, during the XIIIth term of Parliament, extraordinary sessions were systematically held at the request of the Prime Minister, in July and September.

3. – SESSIONS AS OF RIGHT

Parliament is also convened, as of right, outside of the annual session and if it is not already in session, in three specific circumstances laid down by the Constitution:

- Article 16 makes provision for the convening, as of right, of the two assemblies when the President of the Republic decides to have recourse to the emergency powers which the said article grants him;
- Article 18 makes provision for the two assemblies to be specially convened, out of session, in order to listen to the reading of a message from the President of the Republic;
- Article 12 makes provision for the convening of the National Assembly, newly elected after a dissolution, on the second Thursday following its election. Should it so convene outside the period prescribed for the ordinary session, a session (during which the two assemblies may meet) shall be called by right for a fifteen-day period. If this first meeting is held less than fifteen days after the end of the ordinary session, the latter is extended accordingly by a session as of right.

II. – RULES CONCERNING THE RHYTHM AND LENGTH OF PLENARY SITTINGS

When the National Assembly is convened and in particular during the ordinary session, it is not always in sitting. In fact it sits according to a calendar organized by the week, by the day of sitting and by the sitting. Certain sittings are given over to a specific agenda.

The organization of the plenary sittings in the National Assembly attempts to fulfil several objectives which are not always easily reconcilable:

- To make provision for the time necessary for the examination of the items on the agenda whilst respecting the constitutional limit of 120 days of sitting per ordinary session;
- To avoid having the plenary sittings interfere with the meetings of other bodies of the National Assembly and in particular with meetings of political groups, and committees;

- To allow M.P.s to carry out, in the best conditions possible, their other activities and in particular those linked to other elected offices they may hold;
- The diversity of these objectives and the variation in the time constraints which they lead to, means that the organization of the "parliamentary week" is as much based on custom or the agreement of the various actors concerned (the President of the National Assembly, the Government, the political groups of the governing majority and of the opposition) as it is on the application, to the letter, of the texts which regulate this field.

The new wording of article 48 of the Constitution, subsequent to the constitutional revision of July 23, 2008, changed the rules concerning the setting of the agenda. It is now stated that the agenda "shall be determined by each House". Beyond the Government bills whose examination takes priority (the Finance Bill and the Social Security Financing Bill in particular but, to a lesser extent, bills transmitted by the other Assembly at least six weeks previously), the Government has control of the agenda for two weeks out of four and the Parliament has control over the other two, with one of these two weeks being set aside in priority, and in the order set by each assembly, to the monitoring of Government action and to the assessment of public policies. Furthermore, one day per month is to be given over to an agenda set by each assembly upon the initiative of the opposition and the minority groups in the said assembly.

The same article 48 states that at least one sitting per week shall be given over, in priority, to questions from members of Parliament and to answers by the Government. In accordance with article 133 of the Rules of Procedure, the Conference of Presidents sets the sittings for Government question time during the ordinary sessions. Traditionally these are held at the beginning of the sittings on Tuesday and Wednesday afternoons.

In 2009, the Constitution broadened the aforementioned rule to extraordinary sessions. Since then, the practice has been to hold only one sitting of Government question time per week during extraordinary sessions.

Apart from this, article 28 of the Constitution allows the assemblies to determine their weeks of sitting. In practice, it is more a case for them to determine the weeks they will not sit (during holiday periods or election campaigns for example). The article then states that the days and the hours of sittings shall be determined by the Rules of Procedure of each assembly.

On this basis, the Rules of Procedure of the National Assembly provides that the Assembly will sit each week on Tuesday mornings, afternoons and evenings, as well as Wednesday afternoons and evenings and Thursday mornings, afternoons and evenings. Wednesday mornings are given over to committee work. The times of sittings are the following: 9.30a.m.-1p.m., 3p.m.-8p.m. and 9.30p.m.-1a.m.

In order to maintain the necessary flexibility of the system, the Rules of Procedure also establish the procedures which can modify these rules, whilst, at the same time, respecting the limit set down in the second paragraph of article 28 of the Constitution: additional sittings may be held upon the proposal of the Conference of Presidents or, by right, upon the request of the government.

In the same way, the National Assembly may decide to depart from the timetable set down by the Rules of Procedure, either upon a proposal of the Conference of Presidents (on a specific agenda) or upon a proposal of the relevant committee or of the Government to continue the debate which is being held.

These possibilities of departing from the normal time procedure are particularly used during the period when the National Assembly is examining the finance bill (approximately from October 20 to November 20) when sittings are held on Fridays and sometimes Mondays in addition to the three days provided for in the Rules of Procedure and even, at times, on Saturday and Sunday, if necessary.

File n°26

The Setting of the Agenda and the Conference of Presidents

Key Points

The original wording of the 1958 Constitution gave the Government sole control of the priority agenda of the assemblies.

The constitutional reform of July 23, 2008, henceforth allows for the sharing of the agenda between the Government and Parliament.

In practice, the agenda is set by the Conference of Presidents.

☞ *See also files 22, 23, 27, 44, 45 and 48*

I. – THE AGENDA IS SHARED BETWEEN THE GOVERNMENT AND PARLIAMENT

In its original wording, article 48 of the Constitution provided that the agenda of the assemblies included, as a priority and in the order that the Government set, the discussion of bills tabled by the Government and Members' bills which it, the Government, had accepted. With the exception of sittings given over, at least once a week, to Government question time and, once a month, to a priority agenda set by each assembly, article 48 provided for a priority Government agenda which could take up all the time available in plenary sitting.

The new wording of article 48 consequent to the Constitutional Act of July 23, 2008, states that the agenda shall be set by each assembly and introduces a sharing of the agenda between the Government and Parliament.

The agenda is determined by the Conference of Presidents (see III below) in sequences of four weeks and must follow the priorities laid down in article 48 of the Constitution.

So as to enable the Executive to implement the legislative reforms which it considers essential within a reasonable time limit, a part of the agenda, two weeks of sitting out of four, are given over to the exclusive initiative of the Government. According to the Constitution, the Government may decide the bills (including Members' bills) which it wishes to see included on the agenda for these two weeks and it may set the order in which they will be considered.

Neither the Conference of Presidents nor the Assembly may have a say on this chosen order.

As well as having the right to set this part of the agenda, the Government is also free to change it. A letter addressed to the President of the National Assembly or even, although this is much rarer, a simple statement made in plenary sitting by a member of the Government, suffice to change the order of the bills included on the agenda, to withdraw a bill or even, in exceptional circumstances, to table a bill which has not previously been planned.

The Assembly itself sets the agenda for the two remaining weeks. One week concerns the monitoring of Government action and the assessment of public policies whilst the other is given over to the consideration of bills which it wishes to see debated (referred to as the "Assembly Week"). The Conference of Presidents draws up the list of Members' bills which the President of the National Assembly will submit to the Assembly. The latter will then vote on the whole thing and no amendment is allowed.

The order of business which is drawn up is published in the *Journal officiel* and on the website of the National Assembly.

II. – EXCEPTIONS TO THE PRINCIPLE

1. – GOVERNMENT PRIORITY IS MAINTAINED FOR CERTAIN BILLS

The third paragraph of article 48 does provide for the priority inclusion on the agenda of certain bills upon the request of the Government and outside of the weeks which are in any case given over to Government business.

Finance bills and social security financing bills may thus be given priority inclusion on the agenda, including during the weeks usually reserved for monitoring or the so-called "Assembly" weeks. This priority can be explained by the fact that such bills are essential to the implementation of Government policy and their examination is subject to very strict time constraints which are imposed by the Constitution (see articles 47 and 47-1 of the Constitution).

Government and Members' bills which have been passed by the other assembly and which were transmitted at least six weeks previously, Government bills concerning a state of crisis and requests for authorization, by virtue of article 35 of the Constitution, concerning an intervention of the armed forces abroad for a period of more than four months or a declaration of war, may be given priority inclusion on the weeks normally set aside for the Assembly's agenda (but not during the monitoring weeks).

Insofar as the first paragraph of article 48 of the Rules of Procedure henceforth bestows a general principle of competence on the Conference of Presidents, the Government informs the Conference of Presidents, at the latest, the day before it meets, before including bills on the agenda.

2. – RESPECT OF THE TIME LIMITS LAID DOWN BY THE CONSTITUTION

The constitutional revision significantly modified article 42 of the Constitution by stating that the examination of a Government or member's bill in plenary sitting shall concern the text drawn up by the committees. So as to allow a reasonable time span to the committees in order to examine the bills submitted to them, a minimal limit has been set by the Constitution between the tabling and the discussion in plenary sitting.

Thus the discussion on first reading of a Government or Member's bill cannot take place before the first assembly where it was tabled until the end of a six-week period after its tabling. In the case of a bill which has been transmitted by the other assembly, this period is reduced to four weeks as of the date of transmission. This does not apply to finance bills, social security financing bills and bills pertaining to a state of crisis, nor when the accelerated procedure has been applied (article 45 of the Constitution).

In accordance with paragraph 2 of article 46 of the Constitution, the same time limits apply to institutional acts unless the accelerated procedure has been implemented. In this case, a period of fifteen days must elapse between the introduction of a bill of an institutional nature and its debate in the assembly where it was tabled.

The discussion of censure motions (articles 49, paragraphs 2 and 3 of the Constitution) must take place, at the latest, the third day of sitting following the end of the constitutional limit of forty-eight hours after the tabling of the motion. This date is set by the Conference of Presidents. Furthermore, article 51 of the Constitution states that "the closing of the ordinary session or the extraordinary sessions shall be automatically postponed, in order to permit the application of article 49 if the case arises". For the same reasons, additional sittings are of right.

3. – QUESTIONS TO THE GOVERNMENT

Article 48, paragraph 2 of the Constitution, states that "*during at least one sitting per week, including during the extraordinary sittings provided for in article 29, priority shall be given to questions from Members of Parliament and to answers from the Government*".

In practice question time is divided between questions to the Government and oral questions without debate.

These Government question time sittings take place twice a week at the National Assembly: on Tuesday and Wednesday afternoons, between 3pm and 4pm. In the case of extraordinary sessions, the practice which has been followed since 2009 is to set aside only one sitting of Government question time per week.

Oral questions without debate take place on Tuesday and Thursday mornings during the week reserved for the monitoring of Government action and the assessment of public policies.

4. – THE RESERVED AGENDA FOR OPPOSITION AND MINORITY GROUPS

The recognition of the rights of opposition and minority groups which is provided by article 51-1 of the Constitution, is the direct result of the constitutional revision of July 23, 2008. Article 48, paragraph 5, of the Constitution, states that: "*One day of sitting per month shall be given over to an agenda determined by each House upon the initiative of the opposition groups in the relevant House, as well as upon that of the minority groups*".

The role provided to the opposition in the setting of the agenda has quite substantially been increased. In fact the priority agenda which is provided to the opposition corresponds to "*one day of sitting per month*". Whilst groups belonging to the opposition could have, according to the old Rules of Procedure, seven sittings with parliamentary initiative per session, they now have twenty-seven such sittings per session (i.e. three sittings for each of their days).

The Conference of Presidents determines the agenda of this day on the basis of bills proposed for inclusion by the opposition or minority groups.

III. – THE CONFERENCE OF PRESIDENTS

The Conference of Presidents is the competent body as regards the preparation of the organization of the work of the National Assembly in plenary sitting. It is convened by the President of the National Assembly once a week, usually on a Tuesday, or more often if necessary.

1. – COMPOSITION

The Conference of Presidents is made up, apart from the President, of the six vice-presidents, the eight chairmen of the standing committees, the General *Rapporteur* of the Finance Committee, General Economy and Budgetary Monitoring Committee, the Chairman of the European Affairs Committee and the chairmen of the political groups. The chairmen of *ad-hoc* committees may be invited to attend upon their request.

The Government is represented by one of its members, usually the Minister in Charge of Relations with the Parliament. This person transmits to the Conference of Presidents the plans of the Government for the sittings weeks during which it has priority.

2. – ROLE

The new wording of article 48 of the Constitution lays down the principle of the setting of the agenda by the assembly. It is the task of the Conference of Presidents to determine the order of business whilst taking into account the limits laid down by the Constitution.

First of all, the Government informs the Conference of Presidents of its overall plans concerning the timetable of the session. Thus the Minister in Charge of Relations with Parliament transmits to the Conference of Presidents, before the opening of the session or after the appointment of the Government, the weeks which the Government plans to reserve during the session for the consideration of bills and debates which it requests to be included on the agenda.

The Conference of Presidents also lays down, for the whole session, the timetable of monthly sittings given over in priority to an agenda set by the opposition or minority groups (article 48, paragraph 5 of the Constitution). The sittings are divided up, at the beginning of each session, between the opposition groups and the minority groups according to their number of members with each group having control over the agenda of at least three sittings per ordinary session.

Based on these priorities, the Conference of Presidents draws up the overall provisional timetable for the ordinary session and it is then posted up and published. Modifications may be made during the year, for example if the Government wishes to intervene during certain weeks.

The agenda is then drawn up by the Conference of Presidents for each four-week sequence. On account of the constitutional priority which is given to Government in the setting of the agenda (paragraphs 2 and 3 of article 48 of the Constitution), the Conference of Presidents does not decide on the order of business which is transmitted to it concerning the two weeks reserved for the Government nor on the bills which are the Government priority. Nonetheless, even for this part of the agenda, the meeting of the Conference of Presidents can be the forum for an exchange of views which might lead the Government, in addition to the prior consultations which it has already had, to change certain of the plans it had previously set out.

In regards to the two other weeks, the Conference of Presidents has broad leeway in setting the agenda.

Group chairmen and committee chairmen may make proposals for inclusion on the agenda of the “Assembly’s Week”: their proposals must be addressed to the President of the National Assembly, at the latest four days before the Conference meets. As regards the weeks of monitoring, each opposition or minority group has the right to include one assessment of monitoring subject.

The Conference of Presidents organizes the general discussion of the texts or the debates included on the agenda, notably by sharing out the length of speaking time which will be provided to speakers whatever the context (governmental or parliamentary initiative) of the bills or debates in question.

In addition, in accordance with article 45 of the Constitution, the Conference of Presidents of the two assemblies may decide jointly to oppose the implementation of the accelerated procedure.

The Rules of Procedure also consider the following within the remit of the Conference of Presidents:

- Organizing the sittings of oral questions, whether it be the oral questions without debate or the two sittings of questions to the Government;
- Expressing its opinion on the conformity of an impact study associated with a bill, to the presentation conditions laid down by the institutional law relating to the application of article 39 of the Constitution;
- Setting the maximum length of time for the overall consideration of a bill (set time limit);
- Drawing up the conditions and the length of the discussion on the annual finance bill. This deals both with the first part of this discussion and with the second part when the budgetary missions are examined;
- Deciding that there will be a ‘solemn vote’ by public ballot, on the entire text of important bills and setting the dates of such votes in advance;
- Setting the day for the examination of censure motions and organizing their discussion.

File n°27

The Minister in Charge of Relations with the Parliament

Key Points

The Ministry in Charge of Relations with the Parliament was created during the Fourth Republic and was institutionalized during the Fifth Republic. It is the Government body responsible for the facilitation of relations between the executive and the legislative powers. This ministerial department, which has no administrative structure of its own and is essentially made up of its own staff of advisors, participates in the organization of governmental work and plays a central role in the setting of Parliament's agenda.

☞ *See also files 25 and 26*

The position of Minister in Charge of Relations with the Parliament was born in the aftermath of the Second World War and appeared in various Governments of the Fourth Republic. It became however essential for the operation of the institutions of the Fifth Republic, especially within the framework of the notion of "rationalized parliamentarism". Although the Government had witnessed, since 1958, a substantial increase in its powers to intervene in the legislative process, it appeared necessary that one of its members should not only ensure Government coordination concerning work in this field but should also play the role of mediator between the ministers and the parliamentarians and in particular those who were members of the ruling majority which supported the Government.

I. – THE MINISTER IN CHARGE OF RELATIONS WITH THE PARLIAMENT PLAYS AN IMPORTANT ROLE IN THE IMPLEMENTATION OF GOVERNMENTAL POLICY

1. – HE COORDINATES THE LEGISLATIVE PROGRAMME OF THE GOVERNMENT

The implementation of governmental policy is carried out mainly through the passing of laws. The setting of the legislative agenda of the assemblies is partly in the hands of the Minister in Charge of Relations with the Parliament who must take into account at the same time the desires of the ministers, the progress of the bills he presents and the workload of the Parliament. Thus, he

must be aware of the progress of the bills proposed by his colleagues in the Government and of the wishes of the agenda set down by the assemblies.

So as to be aware of the consequences of the different governmental bills and the technical or political problems which might arise during parliamentary debates, he is represented at the inter-ministerial meetings which take place in order to harmonize the positions of the various ministries.

He also takes part in the arbitration meetings which select the Government or Members' bills liable to be included on the agendas of the assemblies and which decide on the calendar for the examination of these bills.

He is included in the drawing-up of the legislative part in the Council of Ministers and this enables him to set a priority calendar for the bills and to propose their inclusion on the agendas of one or other of the assemblies.

2. – HE PLAYS A ROLE OF POLITICAL MEDIATION BETWEEN PARLIAMENT AND GOVERNMENT

Generally speaking, the Minister in Charge of Relations with the Parliament must facilitate relations between ministers and parliamentarians. Notably he must foresee the possibility of difficulties arising between the Government and the governing majority.

In order to do this, he participates in meetings of the political groups which make up the ruling majority and he gives them information concerning governmental policy. This allows him to alert his colleagues to the reactions of the political groups and to the positions of M.P.s. Traditionally he also attends the meetings of the main leaders of the ruling majority groups.

II. – THE MINISTER IN CHARGE OF RELATIONS WITH THE PARLIAMENT IS INVOLVED IN THE PLANNING OF PARLIAMENTARY WORK AND ENSURES THE AVAILABILITY OF MINISTERS TO ANSWER QUESTIONS RAISED BY PARLIAMENT

1. – HE CONTRIBUTES TO THE DRAWING-UP OF THE AGENDA

The Minister in Charge of Relations with the Parliament attends, during the sessions, the meetings of the Conference of Presidents which take place in each of the assemblies (every week at the National Assembly and every three weeks on average at the Senate) and which, under the chairmanship of the President of the assembly concerned, bring together the vice-presidents, the chairmen of the standing committees, the chairmen of current *ad-hoc* committees when they exist, the General *Rapporteur* of the Finance Committee, the Chairman of the European Affairs Committee and the chairmen of the political groups in order to set the agenda of the Assembly.

Before the constitutional revision of July 23, 2008, the Government, in accordance with article 48 of the Constitution, had almost complete control over

the agenda of the assemblies. Since the adoption of this revision, it shares this role with the assemblies. Only two out of four weeks of sittings are given over in priority to bills and to debates which the Government has requested to be included on the agenda. The two remaining weeks are given over to an agenda set down by the two assemblies on a proposal of the Conference of Presidents. One of these weeks is reserved for the monitoring of Government action. It should nonetheless be stressed that the Government may have certain types of bill included on the agenda with priority. These include finance bills and social security financing bills.

Before the opening of the session, the Minister in Charge of Relations with the Parliament gives an indication to the Conference of Presidents of the National Assembly, of the weeks which the Government intends to use for the tabling of its bills. Then, at the beginning of each eight-week sequence, the Conference of Presidents draws up a provisional programme.

The day before the Conference of Presidents, the Minister in Charge of Relations with the Parliament transmits, by letter addressed to the President of the Assembly, the Government's requests for priority inclusion on the agenda of the weeks set aside for its bills. During the Conference of Presidents, he ensures the synchronization between the inclusion of the bills and the debates on the agenda during the weeks set aside for parliamentary initiative and the timetables of the relevant ministers.

The Government may, at any time, request changes to the agenda of the assemblies in accordance with the powers provided to it by article 48 of the Constitution i.e. concerning the weeks set aside for the Government and the bills it can include with priority by a letter of revision or by a statement in plenary sitting. In such a case, Parliament is usually informed by a letter from the Minister in Charge of Relations with the Parliament and the Conference of Presidents may be convened if necessary. In certain cases the change to the agenda may merely be announced in a statement coming from a minister present on the Government bench. The latter however speaks in the name of the Government and with the agreement of the Minister in Charge of Relations with Parliament.

2. – He ensures the permanent availability of the Government to answer Parliament's questions

During the legislative debates, he ensures that there is a permanent governmental presence in the sitting and makes sure that the relevant ministers are present during the debates which concern them.

He plays the same role in the various debates organized particularly during the weeks given over to the monitoring and the assessment of pubic policies.

During oral question sittings he collects the parliamentarians' questions and organizes the Government's means of reply.

He also makes sure, in collaboration with the General Secretariat of the Government and the Prime Minister's staff, that the ministers reply within the time limits to the written questions asked by M.P.s.

3. – HE FOLLOWS THE DEBATES

The Minister in Charge of Relations with the Parliament is very much present during the sittings of the assemblies. It can happen that he replaces his absent colleagues, notably during question time.

He ensures, notably through his assistants, who are present during all discussions, the correct running of the debates. It is also his task to advise members of the Government on the parliamentary procedure and the attitude to adopt in one circumstance or another. On account of his knowledge of parliamentary procedure and parliamentary life, he is called to play a leading role in the implementation of the instruments of rationalized parliamentarianism (application of the accelerated procedure, forced votes, second deliberations, confidence votes on bills, etc.).

File n°28

The General Secretariat of the Government

Key Points

The General Secretariat of the Government was created in 1935 and is a light administrative body (it numbers about one hundred civil servants). It is under the authority of the Prime Minister and is headed by the Secretary General of the Government.

Its task is to ensure the correct functioning and the legality of Government action. As such it is a key contact for the departments of the National Assembly.

☞ *See also files 2 and 3*

I. – THE GENERAL SECRETARIAT OF THE GOVERNMENT: THE ADMINISTRATIVE BODY IN CHARGE OF ENSURING THE CORRECT FUNCTIONING OF GOVERNMENT AND THE LEGALITY OF GOVERNMENTAL ACTION

The missions of the General Secretariat of the Government are fourfold:

– The organization of governmental work and the respect of procedures,

– Providing legal advice to the Government,

– The continuity of governmental action in the case of the formation of a new Government,

– Monitoring the services of the Prime Minister.

1. – THE ORGANIZATION OF GOVERNMENTAL WORK

The General Secretariat of the Government is involved at all stages in the development of Government decisions.

First of all, it convenes the inter-ministerial meetings and draws up the minutes which it files and distributes. In this way, the General Secretariat of the Government fulfils the role of "the Clerk of the Republic".

It is also responsible for the transmission of the most important texts (laws, ordinances etc.) to the consultative formations of the *Conseil d'État,* for putting forward the Government's point of view and for ensuring the coherence of the speeches of the various ministers as well as for following the development of the

debates. A representative of the General Secretariat of the Government attends the deliberations of the *Conseil d'État* so as to ensure the coherence of the speeches of the representatives of the ministries. The General Secretariat of the Government pays particular attention to the legal positions taken by the *Conseil d'État* so as to avoid subsequent censure of the text, either through an appeal against a decree by the litigation formations of the *Conseil d'État* itself or through an appeal against a law by the Constitutional Council.

The General Secretariat of the Government is also responsible for the secretariat of the Council of Ministers and prepares its agenda and the files for the questions which are included on the agenda. It also records the decisions taken.

2. – LEGAL ADVICE TO THE GOVERNMENT

The General Secretariat of the Government has a role as legal adviser to the Prime Minister's and the other ministers' staff.

The members of the General Secretariat of the Government and in particular the '*chargés de mission'* examine the legality and the formality of the texts.

The General Secretariat of the Government may be consulted by ministers or their staff on certain legal questions when they wish to have the opinion of a body with a 'horizontal expertise'.

In collaboration with the ministries concerned, the General Secretariat of the Government defends before the *Conseil d'État* the decrees which have been the subject of an appeal. It also ensures a 'constitutional oversight', at all stages of the procedure, on the problems of constitutionality which are raised by a text and writes up observations in the name of the Government in the case of a referral to the Constitutional Council.

In addition, the General Secretariat of the Government ensures the distribution of legal documentation to the ministries and draws up, in particular, the circulars of the Prime Minister concerning the interpretation of texts.

3. – THE SPECIFIC REMIT OF THE GENERAL SECRETARIAT OF THE GOVERNMENT UPON THE FORMATION OF A NEW GOVERNMENT

The General Secretariat of the Government is a permanent administrative body and thus its members are not replaced when the Prime Minister leaves his position.

It is in fact the duty of the General Secretariat of the Government to guide the new Government upon its arrival in office. The General Secretariat of the Government is the guarantor of the continuity of governmental action despite political changes.

It prepares the decrees of attribution and of delegation which define the remit of each member of Government. It distributes the logistical means (buildings, offices etc.) to the new ministerial teams and it provides them with all the necessary information (on the progress of such and such reform, on the procedures of Government work).

4. – MONITORING THE SERVICES OF THE PRIME MINISTER

The General Secretary of the Government also directs all of the services under the authority of the Prime Minister and attempts to play a key role in the area of the modernization of the administration.

II. – THE GENERAL SECRETARIAT OF THE GOVERNMENT: A KEY CONTACT FOR THE DEPARTMENTS OF THE NATIONAL ASSEMBLY

The General Secretariat of the Government plays a major role in parliamentary life by ensuring the publication and the transmission to the assemblies of information concerning the organization of sessions and sittings (decrees convening extraordinary sessions, requests for the extension of military operations abroad beyond four months etc.). It has a central position in the legislative process and is a key contact for the Parliament in the carrying-out of numerous tasks which represent quite a substantial share of parliamentary work.

1. – THE GENERAL SECRETARIAT OF THE GOVERNMENT PLAYS A DISCREET BUT INDISPENSABLE ROLE IN THE LEGISLATIVE PROCEDURE

The General Secretariat of the Government, in collaboration with the Minister in Charge of Relations with the Parliament and the minister responsible for defending a bill before Parliament, ensures the preparation of the decree presenting the bill and follows the legislative procedure. It is the job of the General Secretariat of the Government to "physically" bring the bill to the "table" of the parliamentary assemblies. In real terms, this "tabling" has been carried out since April 2008, by electronic communication: the bill is, in fact, sent by electronic mail to the Table Office of the relevant assembly.

In addition, according to article 115 of the Rules of Procedure of the National Assembly, when a Government or Member's bill which has been passed by the Senate, is then passed by the National Assembly without modification, the President of the National Assembly "*shall transmit the final instrument to the President of the Republic for promulgation through the Secretariat-General of the Government*". It is thus the duty of the General Secretariat of the Government to gather the signatures required by the Constitution and to ensure the publication of the text in the *Journal officiel*. In the case of referral to the Constitutional Council, the General Secretariat of the Government plays an important role as it is responsible for presenting Government observations concerning the appeal against the bill which has been passed.

Similarly after the passing of a law, the General Secretariat of the Government ensures that the application decrees, i.e. those necessary for the settling of all the details which the law could not deal with, are enforced in a reasonable time limit and draws up a report on them to the Prime Minister.

2. – THE GENERAL SECRETARIAT OF THE GOVERNMENT: A KEY CONTACT FOR PARLIAMENT

Its position as a "secretariat" for governmental work and its role regarding the respect for procedures makes the General Secretariat of the Government a real crossroads for the relations between Government and the National Assembly in the carrying-out of numerous tasks and operations which make up parliamentary work. The General Secretariat of the Government is particularly involved in the procedure regarding written questions. In this area, it centralizes the replies of the different ministries, monitors their content and transmits them to the assemblies for publication in the *Journal officiel*. This centralization role also applies for the transmission to Parliament of the reports which are provided for by various bills. For example, an administration cannot, by itself, send a report provided for by law, to Parliament. It must pass through the General Secretariat of the Government which checks on the legality of the report and transmits it to the Table Office of the relevant assembly which can then table it.

The General Secretariat of the Government also supervises the correct composition of extra-parliamentary bodies i.e. those on which M.P.s and Senators sit by virtue of specific laws. The representatives of Parliament are generally appointed to such bodies by the President or by the standing committees.

The appointment of parliamentarians to missions, in accordance with article L.O. 144 of the Electoral Code, also passes through the General Secretariat of the Government which ensures that the appointment decree for such missions are published and informs the assembly in which the said appointee sits.

Finally, the same procedure applies for consultation requests on certain appointments envisaged by the Executive. In fact, article 13 of the Constitution, in its wording subsequent to article 5 of the Constitutional Law of July 23, 2008, states that for certain posts and positions important "in the guaranteeing of the rights and freedoms or the economic and social life of the Nation, the power of appointment vested in the President of the Republic shall be exercised after public consultation with the relevant standing committee in each House". The Institutional Law no. 2010-837 of July 23, 2010, draws up the list of such posts amongst which figure in particular the chairmen of various independent administrative authorities and public companies This procedure implies a referral by the Prime Minister which, in practice, passes through the General Secretariat of the Government.

File n°29

The Rules of Procedure of the National Assembly

Key Points

The Rules of Procedure of the National Assembly constitute its "internal law".

The provisions of the Rules of Procedure do not have a constitutional status, although some of them apply constitutional obligations. The Rules of Procedure must comply with the Constitution, with the institutional acts concerning their application and with the Ordinance of November 1958 on the working of the parliamentary assemblies.

The Rules of Procedure, which were adopted and are liable to modification by a motion of the National Assembly, organize the internal working of the National Assembly, lay down the procedures concerning deliberation and determine the disciplinary measures applicable to its members.

It is the responsibility of the President of the National Assembly to have the Rules of Procedure respected and to do so he particularly relies on "precedent". During the plenary sitting M.P.s may call upon the provisions of the Rules of Procedure through the use of "points of order".

☞ *See also files 19 to 55*

The Rules of Procedure of the National Assembly were adopted on June 3, 1959 and were recognized as compliant with the Constitution by a decision of the Constitutional Council on July 24, 1959. They constitute one of the key sources of parliamentary law, although their importance was nonetheless reduced in 1958. The mode of adoption and modification of the Rules of Procedure, the content and the way in which they are applied, all display important characteristics which are vital to the understanding of the position and role of Parliament in the institutions of the Fifth republic.

I. – THE RULES OF PROCEDURE OF THE NATIONAL ASSEMBLY, A SOURCE OF PARLIAMENTARY LAW

In his treatise on political, electoral and parliamentary law, Eugène Pierre wrote: "Outwardly, the Rules of Procedure merely represent the internal law of the assemblies, a collection of instructions designed to apply a methodological

approach to the running of a meeting where many contradictory aspirations meet and clash. . In reality, they are a formidable weapon in the hands of the parties. The Rules of Procedure often have more influence than the Constitution itself on the course of public matters". This statement, which was made during the Third Republic, continued to be valid during the Fourth Republic but could no longer be made today. This is due to the fact that the Constituent of 1958 sought to protect itself from the excesses of parliamentarianism observed during the preceding regimes.

Thus, though the Rules of Procedure remain one of the sources of parliamentary law whose legal nature should be detailed, it is nonetheless a source which is limited and monitored.

1. – THE LEGAL NATURE OF THE RULES OF PROCEDURE OF THE NATIONAL ASSEMBLY

As Paul Bastid emphasized in 1954, "the Rules of Procedure are the internal laws of each chamber, laid down by themselves. The Chamber in establishing its Rules of Procedure acts not as a branch of the legislative power but as an autonomous corporation possessing the power of organization and wielding disciplinary authority over its members".

The Rules of Procedure are part of the legal category of measures of an internal nature, i.e. the validity of the rules it lays down is limited to their internal application.

As regards the position of the Rules of Procedure in the hierarchy of legal norms, the Constitutional Council has continued to judge that the provisions of the Rules of Procedure do not have a Constitutional status. This means notably that the simple lack of knowledge of the Rules of Procedure could not, in itself, be cited in support of an appeal to the Constitutional Council.

Certain provisions of the Rules of Procedure however represent constitutional obligations and could as such not be ignored without calling into question the legality of the legislative procedure. In addition, the Constitution refers directly to the Rules of Procedure of the assemblies. This has been the case, since the constitutional revision of July 23, 2008, of articles 44 (the right of amendment may be used in plenary sitting or in committee under the conditions set down by the Rules of Procedure of the Houses, according to the framework determined by an Institutional Act), 51-1 (the Rules of Procedure of each House shall determine the rights of the parliamentary groups. They shall recognize that opposition groups in the House concerned, as well as minority groups, have specific rights), and 51-2 (the conditions for the setting-up of commissions of inquiry are determined by the Rules of Procedure of each assembly).

2. – A HIGHLY REGULATED AND MONITORED SOURCE

According to article 61 of the Constitution, the Rules of Procedure of the parliamentary assemblies must be compliant with the Constitution.

This detail marks a break with French constitutional tradition which, in accordance with the principle of the autonomy of the parliamentary assemblies, provided the assemblies with exclusive jurisdiction over their own Rules of Procedure. Michel Debré accepts this change in his memoirs: "*The monitoring of the Rules of Procedure of the assemblies is a vital measure...my experience allowed me to notice to what extent the Rules of Procedure add to the Constitution and in a way which is often detrimental for governmental authority and for the value of legislative work"*. It was for this reason he wrote that "*a final precaution was taken. The Rules of Procedure of the parliamentary assemblies, before their implementation, will be submitted to the Constitutional Council which will thus have the power to strike out the articles which are contrary to fundamental law and its spirit"*.

Henceforth, as Jean Gicquel writes, "*the assemblies are no longer masters of their own households*".

The texts which regulate the Rules of Procedure of the assemblies are both numerous and important as regards their contents.

The Constitutional Council thus decided that this requirement of compliance should be extended to the provisions of institutional acts concerning Parliament which were passed in application of the Constitution. In fact, the vast majority of such laws were decided upon by edict in the four months following the promulgation of the Constitution. They are innumerable and concern such important fields as the length of the powers of each assembly, the number of their members, their allowances, the conditions of eligibility and ineligibility as well as incompatibility, the conditions for the election of those replacing M.P.s in the case of a seat being made vacant, the regulation of proxy voting or the vote on the finance bill. The Institutional Law of April 15, 2009, concerning the application of articles 34-1, 39 and 44 of the Constitution, deals, amongst other things, with provisions relating to the procedure on impact studies and the conditions for the tabling and the examination of resolutions and amendments.

The Constitutional Council also decided that the Ordinance of November 17, 1958 concerning the working of the parliamentary assemblies, which has a simple legislative status, took primacy over the Rules of Procedure of the assemblies. This clarification is significant, as this text, in addition to the traditional provisions concerning the premises provided to the parliamentary assemblies, their financial autonomy or their civil liability, contains other rules concerning, for example, commissions of inquiry, parliamentary petitions and delegations or, since 2009, the consultation of the *Conseil d'État* on a Member's bill.

This obligatory, preliminary verification by the Constitutional Council was applied 69 times between 1959 and 2009. The main lines of jurisprudence were set down as early as the decisions concerning the definitive Rules of Procedure of the assemblies in the spring of 1959. As regards the extent of this monitoring,

Pierre Avril and Jean Gicquel underline in their manual of parliamentary law that, "*the jurisprudence of the Constitutional Council considers that the provisions of the Rules of Procedure which apply a constitutional rule must strictly respect the letter of that rule, without adding or subtracting anything, whilst those which are not, strictly speaking, in the field of constitutional provisions, must simply not enter into conflict with them.*"

II. – MODES OF ADOPTION AND MODIFICATION OF THE RULES OF PROCEDURE OF THE NATIONAL ASSEMBLY

In this particular field, the initiative is strictly in the hands of the M.P.s in keeping with the principle of the autonomy of the parliamentary assemblies. In concrete terms, this means the tabling of a motion for resolution, which, to be admissible, must, according to article 82 of the Rules of Procedure of the National Assembly, "formulate internal measures or decisions which, since they have to do with the operation and discipline of the Assembly, are entirely within its jurisdiction."

The procedure of examination of such a motion is the same as that applicable to Members' bills on first reading. Once it has been tabled, the motion for resolution is examined by the Law Committee and adopted in plenary sitting.

The provisions of articles 34, 40 and 41 of the Constitution (financial inadmissibility and respect of matters for statute) are not applicable to such motions.

Since coming into force (which required three decisions of the Constitutional Council between May and July 1959), the Rules of Procedure of the National Assembly have been modified thirty-two times.

Among the most recent of these modifications, the most significant have been that of January 26, 1994 which aimed at improving legislative work by giving greater importance to the role of the standing committees, through the reduction of the role of the plenary sitting and the strengthening of the monitoring procedures. Also deserving mention is that of October 10, 1995 which implemented the consequences of the constitutional revision of August 1995 and that of October 3, 1996 which introduced clarifications regarding the laws governing the financing of the social security system and the monitoring powers of committees.

During the XIIth term of Parliament, we should mention the resolution of March 26, 2003 which allowed the Conference of Presidents, upon the proposal of the President of the National Assembly, to set up fact-finding missions and which recognized the opposition's right to hold the position of *rapporteur* or chairman of a commission of inquiry set up on its own initiative.

The change of February 12, 2004 which provided for the presentation of a report on the implementation of laws six months after their entry on the statute

book or on the application of the recommendations of committees of inquiry six months after the publication of their reports was also important. So too was that of June 7, 2006 which limited the length of time for the introduction of procedural motions and set the time limit for the tabling of amendments at 5pm the preceding day.

Most of the modifications of the Rules of Procedure deal only with a few articles. Only six motions have modified more than ten articles. These figures should be considered in the light of the changes carried out through the motion adopted on May 27, 2009. Nearly one hundred and fifty articles were modified, introduced or repealed at this time. This reform, which had had no equivalent for over fifty years, implemented the Constitutional Act of July 23, 2008 and brought all the Rules of Procedure of the National Assembly up-to-date.

III. – THE CONTENT OF THE RULES OF PROCEDURE OF THE NATIONAL ASSEMBLY

Generally speaking, the Rules of Procedure of parliamentary assemblies are meant to organize the internal working of the assemblies, to set out the procedures of deliberation and to determine the disciplinary rules which apply to their members.

The Rules of Procedure of the National Assembly contain 200 articles set out in three sections.

Title 1 concerns the organization and the working of the National Assembly and contains provisions dealing with the *Bureau*, the Office of the President, the political groups, the committees, appointments, the Conference of Presidents, the agenda, the holding of plenary sittings, the methods of voting and discipline.

Title 2 deals with the legislative procedure and looks successively at the ordinary legislative procedure, the legislative procedure to be applied to constitutional revisions, to finance bills and to bills governing the financing of the social security system (whose discussion still deals with the Government text or with the text transmitted by the other assembly) as well as special legislative procedures (referendum motions, consultations concerning overseas territories, motions dealing with membership of the European Union, institutional acts, international treaties and agreements, declarations of war and military interventions abroad).

Title 3 focuses on parliamentary monitoring and describes the information, assessment and supervision procedures (Government statements, questions, motions in accordance with article 34-1 of the Constitution, commissions of inquiry, budgetary monitoring, the commission of assessment and monitoring of public policies, European affairs), motions of confidence concerning Government accountability and the criminal liability of the President of the Republic and members of Government (the High Court of Justice and the Court of Justice of the Republic).

In accordance with its own articles 14 and 17, the Rules of Procedure of the National Assembly are specified and completed by the General Instruction of the *Bureau.*

IV. – THE APPLICATION OF THE RULES OF PROCEDURE OF THE NATIONAL ASSEMBLY

The President of the National Assembly applies the provisions of the Rules of Procedure. As Eugène Pierre explained in his aforementioned work, "*it is the duty of the President of the National Assembly to interpret the texts and to apply them to the various situations which might arise*". In doing so, he often makes reference to previous practices ("precedent"). The M.P.s may, at any moment, call for the respect of the Rules of Procedure by asking a point of order.

1. – PRECEDENT

It can happen that during a plenary session certain problems linked to the Rules of Procedure may arise. In this case, the President refers to a precedent in order to see how such a problem was dealt with in the past. The Table Office keeps an up-to-date record of such precedents. Reference to a precedent may be useful in avoiding having to improvise decisions in the heat of the action, but it is not obligatory. In fact, even if the precedent enables the definition of a well-established 'jurisprudence' in a particular case, the President is not obliged to follow it. He maintains, in all cases, total liberty of decision.

It should however be stated that, in practice, precedents play an important role in the application of the provisions of the Rules of Procedure.

2. – POINTS OF ORDER

The M.P.s may, at any time, make a point of order; they have five minutes to do this. They are given the floor either immediately or at the end of the speech taking place. These requests have priority over the main issue and can lead to a suspension of the discussion.

Points of order must concern the Rules of Procedure or the running of the sitting. They may not call the set agenda into question. If these rules are not respected the President may deprive the speaker of the right to speak.

Points of order are regulated by article 58 of the Rules of Procedure. It may happen that the President replies by stating that he will refer the matter to the *Bureau* or to the Conference of Presidents. In practice, points of order are often used to make reference to an event without any clear link to the discussion or in order to slow down a discussion. They can then appear to be a means of filibustering. They are in fact, a right which the President and vice-presidents must handle with much dexterity.

In the framework of the set time limit procedure, which is based on the overall allocation of a maximum speaking time to each of the political groups,

the time spent on points of order is counted when the President considers that such points clearly have no link with the Rules of Procedure or the running of the sitting. Nonetheless in its decision of June 25, 2009, the Constitutional Council judges that "*whilst the setting of time limits for the consideration of a bill in plenary sitting allows for the counting of the time spent particularly on requests for the adjournment of the sitting and on points of order, M.P.s may not be deprived of any possibility of calling upon the provisions of the Rules of Procedure so as to ask for the application of constitutional provisions"*.

File n°30

The Law: Expression of the Legislative Power of Parliament

Key Points

The law is the expression of the general will.

The prerogative of initiating laws belongs to the Prime Minister and to parliamentarians.

In addition to the so-called "ordinary" laws, there are other categories of laws provided for by the Constitution. Specific rules and procedures apply to each of these categories.

All laws, except referendum laws, are passed by Parliament.

An enabling law may allow the Government to have temporary recourse to ordinances, in the area which is usually reserved to the legislative process.

☞ *See also files 31, 32, 33, 34, 39, 42 and 43*

I. – "ORDINARY" LAWS

"*The law is a commandment*", said Portalis, one of the authors of the Civil code.

A more institutional approach defines the law as a prescriptive text passed by Parliament, promulgated by the President of the Republic, if need be after a decision of the Constitutional Council, which sets rules and fundamental principles in the areas listed in article 34 of the Constitution. A law may also be passed by referendum, according to the rules laid down in article 11 of the Constitution. The prerogative of initiating laws belongs to the Prime Minister and to parliamentarians.

In all cases, as article 6 of the Declaration of the Rights of Man and the Citizen of 1789 states, the law is the expression of the general will.

The Constitutional Council, after having repeated the terms of article 6 of the 1789 Declaration, itself considered, from 2004 on, that "*the purpose of the law is to set down rules and it must therefore have a prescriptive scope*"[1].

In addition to the so-called "ordinary laws", there are other categories of law provided for by the Constitution. Specific rules and procedures apply to each of these categories.

II. – SPECIFIC LAWS PASSED BY PARLIAMENT

1. – CONSTITUTIONAL LAWS

Constitutional laws amend the Constitution according to the procedure set down in article 89 of the Constitution

The initiative to amend the Constitution belongs to the President of the Republic, upon a proposal by the Prime Minister, as well as to M.P.s and Senators. The constitutional bill must be adopted in identical terms by the two assemblies. The revision becomes definitive once it has been approved by referendum. Nonetheless, if it is a Government sponsored bill, the President of the Republic may decide not to put it to a referendum but to the Parliament convened in Congress which must approve it by a majority of three fifths of the votes cast.

The area of constitutional revision has a double limitation. It is limited in:

– Time. No amendment procedure may be commenced or continued if the integrity of the territory is jeopardized or in the case of an interim presidency;

– Its field of application. Constitutional laws may not call into question the republican form of government.

2. – INSTITUTIONAL ACTS

Institutional acts set down the rules of organization and running of public authorities in the cases provided for in the Constitution.

Government and Members' bills attempting to modify institutional acts or dealing with a matter upon which the Constitution has bestowed an institutional nature must contain in their title a direct reference to their nature. They may not contain provisions of any other nature.

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1. This principle was once again underlined in ruling 2012-647 DC of February 28, 2012 concerning the law aimed at sanctioning challenges to the existence of genocides recognized by the law: "Considering that, on the one hand, in the terms of article 6 of the Declaration of 1789, 'the Law is the expression of the general will', it stems from this article, as from all other laws of a constitutional value relative to the object of the law, that notwithstanding specific provisions laid down by the Constitution , the purpose of the law is to set down rules and it must therefore have a prescriptive scope".

The Constitutional Council decided that an institutional law "*may only deal with areas and subjects set down in a list by the Constitution*" (decision n°87-234 DC of January 7, 1988) and stated further that "*in the text of an institutional act, the inclusion of provisions which are not of such a nature could distort the scope of such an act*" (decision n°2005-519 DC of July 29, 2005). Nonetheless when non-institutional provisions are included in an institutional act, the Constitutional Council only "relegates" them i.e. downgrades them by giving them the value of "ordinary" laws (which means that they can be modified using the procedure which is applicable to ordinary laws).

Government and members' institutional bills are submitted to a specific adoption procedure:

- Like ordinary laws they may only be examined by the first assembly in which they have been first tabled after a six-week limit has expired following their tabling. Nonetheless, in the case of the implementation of the accelerated procedure, there is a specific fifteen-day limit which is not the case for other laws;
- No amendment may be made nor article added to them which introduces provisions which are not of an institutional nature;
- In the case of a disagreement between the assemblies, the institutional act may only be passed on final reading by the National Assembly with the absolute majority of its members in favour;
- Institutional acts concerning the Senate must be passed in identical terms by the two assemblies. In 2009, the Constitutional Council limited the scope of the idea of institutional acts which "concerned the Senate" to the provisions which directly or specifically affected the Senate. An act does not "concern" the Senate when both of the assemblies are concerned by the same provisions;
- An institutional act may only be promulgated after a statement by the Constitutional Council of its conformity to the Constitution.

3. – FINANCE ACTS

There are three types of finance acts.

- The finance act of the year (often called the "initial" finance law) which every year lays down the resources, the expenditure and the amount of the state budget surplus or deficit;
- The "corrected" finances act, the aim of which is mainly to adjust the forecasts for resources for the current year or to modify expenditure and its distribution;
- The settlement act which states the financial results of each calendar year.

In accordance with article 39 of the Constitution, finance bills are presented first to the National Assembly. The Constitutional Council decided that the same would apply to amendments which, in this particular case, include new measures (decisions n°76-73 DC of December 28, 1976 and n°2006-544 of December 14, 2006).

The Parliament has a time limit of 70 days to announce its decision (40 days for first reading at the National Assembly and 15 or 20 days for first reading at the Senate). If Parliament has not reached a decision within this limit, then the provisions of the bill may be enforced by ordinance.

The finance law is passed in two distinct parts; first of all that concerning resources and the general balance and then that dealing with expenditure and measures having no effect on the balance. The finance bill is submitted for a single reading in each assembly before the Government can convene the meeting of a joint committee in charge of suggesting a text on the provisions remaining in discussion.

4. – SOCIAL SECURITY FINANCING ACTS

The social security financing acts are a category of laws introduced by the constitutional revision of February 22, 1996. They determine the general conditions of the financial balance of the social security and, by taking into account the forecast for its revenue, set the objectives for its spending. They also determine the main direction of health and social security policy and forecast, for each category, the revenue of all the basic obligatory schemes whose expenditure objectives it sets for each branch.

The social security financing bills are examined every year in the autumn, according to similar rules of procedure as those applicable to the finance bills. They are first tabled in the National Assembly and the same applies to amendments which, in this case, include new measures. Parliament has a limit of 50 days in which to reach a decision (20 days for first reading at the National Assembly and 15 days for first reading at the Senate). If Parliament has not reached a decision within this 50-day limit, then the provisions of the bill may be enforced by ordinance.

The social security financing acts have four parts: the first corresponds to the settlement law, the second to the “corrected” financing law for the current year, the third brings together all the revenue for the coming year and the fourth, all the expenditure.

Supplementary “corrected” financing laws may, during the year, modify the provisions of the social security financing laws for the particular year.

5. – PROGRAMMING LAWS

Programming laws (which replace laws which were formerly called “programme” laws since the constitutional act of July 23, 2008) determine the

objectives of the economic and social action of the State in a particular area (national education, military spending etc.) for a period of several years (often five) as well as the financial means it intends investing.

However, the corresponding credits can only be provided by a finance act passed for each budgetary year. The programming laws thus do not have a prescriptive or an obligatory nature from a financial point of view. However plans approved of by Parliament which set down long term objectives may receive financial commitments from the State, although this procedure on planning laws has fallen into abeyance (the last law of this type was that of July 10, 1989 which approved the tenth plan). However since 2008, programming laws may set down the multi-annual guidelines for public finances.

6. – LAWS AUTHORIZING THE RATIFICATION OF TREATIES

Treaties and agreements which are legally ratified or approved have, as of their publication, a superior authority to that of laws, provided of course that each agreement or treaty is applied by the other party.

The treaties and agreements, dealing with the fields listed in article 53 of the Constitution, can only be ratified by the President of the Republic after a vote authorizing him to do so. Such treaties include peace treaties, trade treaties, treaties or agreements concerning the organization of international affairs, those involving State finances, those which modify provisions which are a matter for statute, those concerning the status of persons and those dealing with the transfer, exchange or addition of territory.

During the examination by the assemblies of the ratification bill, the articles contained in the treaties or the agreements submitted for ratification are not voted upon. No amendment may be tabled on the text of a treaty. The National Assembly may only vote in favour of or against the ratification or for postponement.

If the Constitutional Council, having received a referral by the President of the Republic, the Prime Minister, the President of either assembly or by sixty M.P.s or sixty Senators, declares that an international commitment includes a clause running contrary to the Constitution, the authorization to ratify or approve that international commitment can only be passed after a revision of the Constitution.

III. – LAWS NOT PASSED BY PARLIAMENT: REFERENDUM LAWS

Article 11 of the Constitution does not use the term “referendum laws” but it does make provision that in certain fields a Government bill be put to referendum, i.e. to all voters. As they are passed by universal suffrage, referendum laws are not subject to the monitoring of their constitutionality (decision of the Constitutional Council of November 6, 1962).

The bill to be put to referendum must deal with the organization of public authorities, with reforms relating to the economic, social or environmental policy of the Nation and the public services involved, or provide for authorization to ratify a treaty that, although not contrary to the Constitution, would affect the functioning of the institutions.

The decision to hold a referendum is taken by the President of the Republic, upon a proposal of the Prime Minister during a parliamentary session or upon a joint proposal by the two assemblies. In practice Parliament has never used its right to initiate a referendum. As for Government, its proposal has, more often than not, been purely a matter of form as the real initiative comes from the President of the Republic.

The Constitutional Law of July 23, 2008 modified article 11 of the Constitution so as to introduce the aforementioned reference to bills dealing with the environmental policy of the Nation but also in order to set down a new means of calling a referendum. Henceforth, a referendum may now be held on the initiative of one fifth of the members of Parliament, supported by one tenth of the voters enrolled on the electoral register. This initiative takes the form of a Member's bill but cannot have as its objective the repeal of a legislative provision which has been promulgated less than a year previously. If this Member's bill has not been examined by the two assemblies within a time limit which has yet to be decided upon by an institutional law[1], the President of the Republic shall submit it to a referendum.

In addition to the procedure provided for by article 89 of the Constitution, General de Gaulle had recourse to the referendum law procedure in order to revise the Constitution so as to introduce the election of the President of the Republic by universal suffrage (Constitutional Act of November 6, 1962).

IV. – THE SPECIAL CASE OF ENABLING ACTS

In accordance with article 38 of the Constitution, the Government may request the Parliament for the authorization to take measures by ordinance that are normally a matter for statute. The authorization is granted by a law which sets the time limit for such a situation, as well as its purpose and the areas in which the Government intends to take measures.

The ordinances are taken in Council of Ministers, after consultation with the *Conseil d'État*. They may only be ratified in explicit terms. They come into force as soon as they are published but they lapse if a ratification bill is not tabled before the Parliament before the date set by the enabling act. At the end of the

1. The institutional bill dealing with the application of article 11 of the Constitution which was passed on first reading by the Assembly on January 10, 2012, provided for a period of 12 months from the decision of the Constitutional Council stating that the initiative had received the support of at least one tenth of the voters.

time limit mentioned in the enabling law passed by Parliament, the ordinances may only be modified by the law for matters falling within its ambit of statute.

File n°31

The Legislative Field

Key Points

The distinction between a legislative field and a regulatory field was a new concept introduced by the 1958 Constitution.

Article 34 of the Constitution which defines the legislative field however leaves quite a broad scope for that particular area.

In addition, the jurisprudence of the Constitutional Council and institutional practice have enabled the legislative field to be progressively broadened.

I. – THE DEFINITION OF THE LEGISLATIVE FIELD

During the Third and Fourth Republics, the law was defined in a formal way: It was an act passed by Parliament according to the legislative procedure and promulgated by the President of the Republic. The legislative field (matters for statute) had no boundaries. A law could deal with any subject and could even be applied to an individual case. A legislative act could only be modified by another legislative act.

The regulatory power of Government was essentially a power to implement the laws. There was no difference in field between the "law" and "regulation", only a difference in form: the law was an act passed by Parliament and regulations came from the executive. The absolute supremacy of the law, as an expression of the will of the Nation, was conveyed by the inadmissibility of any appeal against the law before a court.

In 1958, the framers of the Constitution of the Fifth Republic wished to protect the very field of Government action and to remove from the legislative field many questions which were more rightly matters for administration or the everyday management of public affairs. In his memoirs, Michel Debré had no doubt that these provisions witnessed "*the birth of a high-quality form of parliamentarianism*". He explained this in front of the *Conseil d'État*: "*From the point of view of principles the definition is normal and it is indeed the confusion between law, regulation and even individual measures which is absurd*".

The Constitution of the Fifth Republic defines the legislative field. Article 34 distinguishes matters for which Parliament sets rules and those for which it determines the fundamental principles.

Until 2008, the "law" or "statutes" set the rules concerning:

- Civic rights and the fundamental guarantees granted to citizens for the exercise of their public liberties; the obligations imposed for the purposes of national defence upon citizens in respect of their persons and their property;
- Nationality, the status and legal capacity of persons, matrimonial regimes, inheritance and gifts;
- The determination of serious crimes and other major offences and the penalties applicable to them; criminal procedure; amnesty; the establishment of new classes of courts and tribunals and the regulations governing the members of the judiciary;
- The base, rates and methods of collection of taxes of all types; the issue of currency.
- The electoral systems of parliamentary assemblies and local assemblies;
- The creation of categories of public establishments;
- The fundamental guarantees granted to civil and military personnel employed by the State;
- The nationalization of enterprises and transfers of ownership in enterprises from the public to the private sector.

The "law" or "statutes" set the fundamental principles of:

- The general organization of national defence;
- The self-government of territorial units, their powers and their resources;
- The preservation of the environment;
- Education;
- The regime governing ownership, rights *in rem* and civil and commercial obligations;
- Labour law, trade-union law and social security.

Article 34 also stated that "Finance Acts shall determine the resources and obligations of the State in the manner and with the reservations specified in an institutional Act", and that "social security financing Acts shall determine the general conditions for the financial balance of social security and, in the light of their revenue forecasts, shall determine expenditure targets". Programme Acts were provided with the role of determining the objectives of the economic and social action of the State.

II. – THE EXTENSION OF THE LEGISLATIVE FIELD

The legislative field has its limits and yet is quite broad. It has gradually been widened on account of the double effect of the liberal jurisprudence of the Constitutional Council and the desire of the framers of the constitutional reform of 2008.

The jurisprudence of the Constitutional Council has led to the *de facto* extension of the legislative field.

The Constitutional Council recalled that the field set down by article 34 was not exhaustive; other articles of the Constitution and indeed its preamble also lay down legislative matters (declaration of war, state of siege, the authorization of the ratification of certain treaties, the provisions of articles 72-74 concerning territorial units). The Charter for the Environment which refers to the "law" (in particular in articles 3, 4 and 7) also broadens the field of the legislator.

In addition, the Constitutional Council prevents the legislator from abandoning or neglecting his own field:

- By stating that the legislator cannot take away the legal guarantee of a rule, a principle or an objective with a constitutional value (decision n° 85-185 DC of January 18, 1985);
- By considering that the legislator cannot rely on regulation to clarify certain provisions that the Constitution imposes on him to define himself. Thus through the penalty of "negative incompetence" the Constitutional Council has ensured for quite some time that the law does include certain characteristics.

This is especially the case since, in an important decision on July 30, 1982 the Constitutional Council decided that "through articles 34 and 37, paragraph one, the Constitution had not intended to declare the unconstitutionality of a provision of a regulatory nature contained in a law, but had wished to recognize that beside the field reserved for legislative instruments there was a separate field in which the regulatory authority had competence, and to provide the Government, through the implementation of the specific procedures of articles 37, paragraph 2 and 41, with the power to ensure the protection of the regulatory field from the possibility of encroachment by the legislative field".

On their side, the framers of the constitutional reform finally decided to extend the scope of the legislative field in July 2008.

Thus article one of the Constitution henceforth permits the law to promote equal access by women and men not only to elective offices and posts but also to positions of professional and social responsibility.

Article 4 provides that the law shall guarantee the expression of diverse opinions and the equitable participation of political parties and groups in the democratic life of the Nation.

In accordance with article 51-2 the law shall determine the rules of organization and operation of committees of inquiry.

The following have been added to article 34:

– The freedom, diversity and the independence of the media;

– The system for electing representative bodies of French nationals living abroad;

– The conditions for holding elective offices and positions for the members of the deliberative assemblies of the territorial communities;

– The multiannual guidelines for public finances.

The legislative field was extended at the same time to the setting-up of new procedures. Thus the following fall within the scope of the legislator:

– Appointments to the posts or positions, concerning which, on account of their importance in the guaranteeing of the rights and freedoms or the economic and social life of the Nation, the power of appointment vested in the President of the Republic shall be exercised after public consultation with the relevant standing committee in each assembly (article 13 of the Constitution);

– The composition, organization and working of the independent commission in charge of giving an opinion on the bills defining the constituencies for the election of Members of the National Assembly, or modifying the distribution of the seats of Members of the National Assembly or of Senators (article 25).

III. – THE PROTECTION OF THE LEGISLATIVE AND REGULATORY FIELDS RESPECTIVELY

The definition of the legislative field goes hand in hand with the recognition of an autonomous regulatory power and with provisions which allow the protection of the limits which have been so-defined between the remit of the legislator and the rest.

1. – THE REGULATORY FIELD

That which does not fall within the legislative field, falls within the regulatory field. Article 37 is thus an extension of article 34: it defines the regulatory field within which the Government may make decrees, i.e. everything which is not specifically listed in the legislative field.

Article 37 opens up a broad field of action to the regulatory power, not only as regards the application of the law but also in matters which are, in principle, excluded from the legislative field. This is why a distinction is drawn between the regulatory power dealing with the application of laws and the “autonomous” regulatory power which is defined by exclusion from matters which are for

statute as listed in article 34. For example: civil procedure falls exclusively within the regulatory field, as well as the rules concerning fines as long as the penalties do not include custodial measures.

2. – INADMISSIBILITY (ARTICLE 41 OF THE CONSTITUTION)

Article 41 of the Constitution allows the Government, as well as, since the Constitutional Act of July 23, 2008, the President of the relevant assembly, to object, during the legislative procedure, to Members' bills and to amendments which do not fall within the legislative field, on the grounds of inadmissibility.

In the case of a disagreement between the Government and the President of the relevant assembly the matter is referred to the Constitutional Council which delivers a judgment within eight days.

This procedure has been seldom used since the beginning of the Fifth Republic. Only 11 decisions concerning such admissibility have been taken by the Constitutional Council since 1958. Until recently it even appeared to be becoming extinct as the last decision dated from 1980. However the President of the National Assembly, Mr. Jean-Louis Debré declared, in January and then again in April 2005, inadmissible, upon the request of the Government, according to article 41, amendments to the bill concerning postal activities (14 587 during first reading and 101 during second reading).

3. – THE PROCEDURE OF "DELEGALISATION" (ARTICLE 37, PARAGRAPH 2 OF THE CONSTITUTION)

When a law has been passed in an area falling within the field of regulation, a procedure of "delegalisation" can be implemented to enable the Government to modify its provisions.

In order to do this, it is necessary to refer the matter to the Constitutional Council, which, if it recognizes the regulatory nature of the text, will authorize its modification by decree. Texts of a legislative nature dating from before 1958 can be directly modified by decree after consultation of the *Conseil d'État.*

File n°32

The Legislative Procedure

Key Points

The legislative procedure has three main phases: the tabling of a bill, its examination by Parliament and its promulgation by the President of the Republic (after a possible referral to the Constitutional Council for the examination of its conformity with the Constitution).

The overriding spirit behind it is the search for consensus between the two assemblies:

– The bill follows a to-and-fro movement between the National Assembly and the Senate, during which the only articles which remain in discussion are those which have not been passed in identical terms by the two assemblies: this is referred to as "the shuttle";

– If the shuttle does not lead to the passing of a common text by the two assemblies or if it takes too much time, the Government can decide to resort to an arbitration procedure by convening a joint committee made up of seven M.P.s and seven Senators. In the case of Members' bills, the presidents of the two assemblies may also convene such a committee. These joint committees are entrusted with the task of drawing up a compromise bill which the Government can submit to the two assemblies.

If the arbitration procedure fails, the Government will generally use the possibility it has of giving the final say to the National Assembly.

The moment it is passed, the bill is transmitted to the General Secretariat of the Government which presents it to the President of the Republic for signature and promulgation. However the promulgation can be delayed if the bill is referred to the Constitutional Council for it to check its conformity to the Constitution (it can even be stopped, if the Constitutional Council declares it unconstitutional), or if, under exceptional circumstances, the President of the Republic requests a new deliberation.

☞ *See also files 30, 31, 33, 34, 35, 36, 37, 42, 44 and 45*

I. – THE TABLING OF THE BILL

The prerogative of initiating laws belongs to the Prime Minister and to M.P.s and Senators. Bills initiated by the Prime Minister are called "*projets de loi*" or Government bills, whilst those initiated by parliamentarians are referred to as "*propositions de loi*" or Members' bills.

Before being examined, each bill is tabled. This requires following a number of prior formalities:

– For Government bills, tabling is preceded by consultation of the *Conseil d'État* for its opinion. In this case the *Conseil d'État* acts as an adviser to the Government and not as an administrative court. This is followed by deliberation in the Council of Ministers;

– Members' bills may be tabled by one or several M.P.s or Senators, on the condition that their adoption does not have the consequence of either a diminution of public resources or the creation or increase of an item of public expenditure: the *Bureau* of each assembly has the responsibility of checking the financial admissibility of Members' bills.

Finance bills and social security financing bills must be first tabled in the National Assembly. On the contrary, bills which deal principally with the organization of territorial units are first of all introduced in the Senate. Outside of these cases, the examination of a bill can begin in either of the two assemblies.

Following its tabling, which requires official public notice, each bill is printed and sent for examination to a standing committee or an *ad hoc* committee.

The Government and Members' bills are divided into two parts:

– The presentation of the case, in which the arguments of the bill's author are put forward with the support of modifications and any new legislative provisions envisaged;

– The main body, drawn up in article form with each article clearly and successively numbered. This is the prescriptive section and will be the only part submitted for examination by the two assemblies. The object of each article is either to modify a provision of a law already in force or to enact a new legislative provision.

Since the constitutional revision of July 23, 2008, Government bills must follow certain conditions concerning presentation which were laid down in an institutional act dating from April 15, 2009. When they are tabled, such bills must be accompanied by an impact study which sets out the desired objectives, presents the motives for the introduction of new legislation, describes the current state of the law in the relevant field, situates the bill in the context of European law, assesses the economic, financial, social and environmental consequences of the bill, as well as examining the application measures envisaged along with their consequences. If the Conference of Presidents of the assembly before which the bill has been presented decides that, within a ten-day period dating from the tabling of the bill, the conditions concerning presentation have not been respected, then the bill cannot be included on the agenda. In the case of disagreement between the Conference of Presidents and the Government, the matter may be referred to the Constitutional Council by the Prime Minister or the

president of the relevant assembly. The Constitutional Council makes a ruling within eight days.

II. – THE SHUTTLE

Each Government or Members' bill is examined successively by the two assemblies of Parliament with the view to passing an identical text. A bill passed in identical terms by the two assemblies is definitive: it constitutes the letter of the law.

The procedure which leads to the definitive adoption of a bill consists of a to-and-fro movement between the two assemblies (hence the term "shuttle"). Each assembly is called upon to examine and possibly to modify the bill adopted by the other. At each stage only the articles over which there is divergence remain in discussion. The shuttle comes to an end when one of the two assemblies passes the bill without modification and with all its articles, as it has been previously passed by the other assembly. Each examination by an assembly is called a "reading".

1. – EXAMINATION IN FIRST READING

Examination in first reading of a bill tabled before an assembly includes several stages: examination by a committee, inclusion on the agenda and finally, discussion in plenary sitting at the end of which the bill will be transmitted to the other assembly. This transmission of the bill to the other assembly initiates the shuttle.

The procedure which is described hereafter is that followed by the National Assembly. This procedure is mostly the same at the Senate although there are some differences, not always small ones, in the procedures of the two assemblies.

a) Examination in Committee

Once a bill has been tabled it is sent for examination to a committee. Except in the case of the setting-up of an *ad-hoc* committee, i.e. a committee specially created for the examination of a particular Government or Member's bill, this examination is carried out by one of the eight standing committees of the National Assembly (seven in the Senate).

The referral of the bill to one or another of the standing committees is carried out by the President of the National Assembly according to their respective remits as they are laid down in the Rules of Procedure of the National Assembly. One or several other standing committees may refer the matter to themselves for consultation.

The committee to which the text is referred (called the lead committee) appoints from amongst its members a *rapporteur*, who is responsible for presenting, on its behalf, a report which will be printed and distributed and made available on-line.

On the basis of the last paragraph of article 39 of the Constitution in the wording subsequent to Constitutional Law of July 23, 2008 and of article 4bis of the Ordinance of November 17, concerning the functioning of the parliamentary assemblies, the President of an assembly may now submit a member's bill to the *Conseil d'Etat* before its examination in committee unless the author disagrees.

The committee then adopts a report which presents its conclusions on the Government or Member's bill which is submitted to it. Prior to this report the committee holds hearings and an in-depth examination of the articles. Since the constitutional revision of July 23, 2008, the discussion in plenary sitting is carried out, except in the cases of constitutional revision bills, finance bills and social security financing bills, on the text which has been adopted in committee and not on the text which was originally tabled. Thus the committee may:

- Propose a new text which includes the M.P.s' or Government amendments which the committee has accepted;
- Adopt the text in its original version;
- Reject the text.

If the committee presents no text at all, the discussion in plenary sitting will be carried out on the original text.

b) Inclusion on the Agenda

In order to be discussed in plenary sitting, a Government or Members' bill must be included on the agenda of the assembly.

Since the constitutional revision of July 23, 2008, the Constitution provides for a minimum time period of six weeks between the tabling of a bill and its consideration in plenary sitting (four weeks for bills transmitted by the other assembly). These limits are not applied to finance bills, to social security financing bills or to bills concerning states of crisis. They are not applied either if the Government decides to implement the accelerated procedure (in this case a minimum period of fifteen days is maintained only for Government or Members' institutional bills) and the two Conferences of Presidents have not jointly opposed such a procedure.

Since the 2008 revision, the Constitution has introduced a sharing of the agenda which is set by each assembly:

- Two weeks out of four are given over to a priority agenda set by the Government. According to this priority, the Government decides upon the list of bills it wishes to see included on the agenda and determines the order in which they will be discussed, as well as the date of their consideration. So as to ensure a smooth planning of the business, the Government gives prior warning to the assemblies and in particular to their standing committees;

– One week out of four is given over to a legislative agenda set by each assembly;

– One day per month is devoted to an agenda reserved for opposition and minority group initiatives.

The various proposals for the agenda which are made concerning the two weeks reserved for the assembly to set its own business are gathered by the Conference of Presidents. The Conference of Presidents makes a summary of them and submits this document to the vote in the relevant assembly. According to the Constitution certain bills will always have priority. The Government can thus have finance bills and social security financing bills included on the agenda during the "assembly" and the monitoring weeks. Bills transmitted by the other assembly more than six weeks previously and bills relating to states of crisis may also be included on the agenda during the "assembly" weeks.

In addition, practice has shown that the respective areas of the monitoring and the "assembly" weeks are not totally reserved: the majority group may request the inclusion of Government bills and may even ask for the holding of a debate during the Assembly's legislative week and in the other direction, the slots available during the monitoring weeks are often used for a legislative agenda.

c) Examination in Plenary Sitting

The discussion in plenary sitting takes place in two phases: the general examination phase and the detailed examination phase. The Conference of Presidents may organize either the general examination phase or the entire discussion.

– **The general examination phase** is essentially a presentation phase. The chairman of the sitting, after having called the bill on the agenda, gives the floor to the Government which is usually represented by the minister concerned by the discussion and then to the *rapporteur* of the committee. For the discussion of members' bills, the floor is first of all given to the *rapporteur*.

– During this phase of the examination, procedural motions may also be introduced (preliminary rejection motions, motions for referral to committee) whose adoption, which is very unusual, leads to the rejection of the bill (preliminary rejection motion) or the suspension of the debate (motion for referral) before the detailed examination of the bill has even begun.

– The Conference of Presidents organizes the general discussion on a bill, setting an overall time limit for the discussion, divided then between the political groups according to their membership.

– The M.P.s are enrolled for the general discussion by the chairman of their political group and the order of speaking is decided upon by the

President of the National Assembly. An alternation between the political groups is respected.

– **The detailed examination phase** consists of the discussion of the bill article by article.

  - **The examination of the articles.** Amendments may be introduced by all the participants in the debate: the Government, the lead or the consultative committees and M.P.s acting in a personal capacity. For the smooth running of the debates, the amendments, with the exception of those presented by Government or the lead committee, must be tabled, unless the Conference of Presidents decides otherwise, at the latest, by 5pm on the third working day preceding the beginning of the consideration of the bill in plenary sitting (specific limits apply to the discussion of finance bills). With the exception of Government amendments, all amendments must fall within, just as Members' bills, the conditions of financial admissibility.

    The chairman of the sitting calls the articles in their numbered order, except in exceptional circumstances when some articles may be deferred. The discussion deals with each article and with all the amendments concerning it. The M.P.s may enrol, for two minutes, in the discussion of an article. When two speakers of differing opinions have expressed themselves, the closure of the debate may be decided upon by the chairman of the sitting or be proposed by a member of the Assembly (the Assembly then decides after one speaker, at the most, has taken the floor against the closure).

    After these speeches, the chairman of the sitting calls the amendments. The floor is given to the author of the amendment for two minutes, then to the *rapporteur* of the lead committee and if the need arises, to the *rapporteur* of the consultative committee as well as to the minister, so that they may give their opinion, and finally to a speaker against the amendment. The chairman of the sitting has the right to authorize a speaker to reply to the committee and another one to reply to the Government (in the case of identical opinions, a single speaker may be authorized to reply at the same time to the committee and to the Government).

    The order of calling the amendments is of great importance in the running of the debate, if only because the adoption of one solution automatically entails the elimination of other counter solutions. The basic principles of the discussion of amendments leads to the notion of moving from the general to the specific: the suppression of an article is called before the suppression of a paragraph, the suppression of a paragraph is called before that of a sentence included in that paragraph etc. When several amendments deal with the same part of a text, they

are called according to how far they differ from the original text. The amendments are discussed and then voted upon one by one following the order ensuing from these principles.

- **Votes.** After the discussion of the last amendment presented on an article, the assembly votes on this article, which may have been modified, and the discussion of the bill continues in the same way, article by article, until the final one.

  At the end of the examination of the articles, a second deliberation on all or part of the bill may be held. This second deliberation is held of right upon the request of the Government or the committee. The chairman of the sitting then puts the whole of the bill, which may be modified by the amendments previously adopted, to a vote. This final vote may be preceded by an explanation of vote, which is granted to one speaker per group for five minutes.

  Votes are normally held by show of hands. In the case of doubt concerning a result by show of hands, the chairman of the sitting requires a sitting or standing vote. In either case there is no detail given in the official report of the debate on the way the MPs present have voted. This is not the case for public ballots, which can be requested by the Government, the chairman or the *rapporteur* of the committee, the chairmen of political groups or their representatives as well as by the chairman of the sitting. For certain important bills, the Conference of Presidents itself decides on a public ballot, setting its date at a time when all M.P.s might be present (in general on Tuesdays after Government question time). This type of ballot is called a “solemn vote”.

- **“Set Time Limit for Debate”.** Since the reform of the Rules of Procedure of the National Assembly of May 27, 2009, the Conference of Presidents may also decide, under certain conditions, on the application of a “set time limit for debate” on bills. This possibility was introduced by the Institutional Law n° 2009-43 of April 15, 2009 on the basis of article 44 of the Constitution in its wording subsequent to the constitutional revision of July 23, 2008.

  This involves the setting of a maximum time limit for the consideration of a whole bill with 60% of the time allotted to the opposition groups. This allocation is then divided up between the opposition groups proportionally according to their numerical size. The rest of the time is divided up in the same way between the groups belonging to the ruling majority. Non-aligned members have a specific speaking time.

  All speeches made by M.P.s are counted in the time allotted to their group with the exception of those of the chairmen of groups (who

each, individually have additional time), of the *rapporteurs* of the lead and consultative committees and of the chairman of the lead committee.

The chairmen of groups may automatically request (and obtain) that a minimum time limit be given over to a bill and once per session they may obtain an extraordinary extension of this time limit within a maximum time period. These minimum and maximum time limits have been respectively set at thirty and fifty hours by the Conference of Presidents which, at any moment, may increase the limit planned for the consideration of a bill if it considers that such a limit is insufficient.

When the "set time limit for debate" procedure is applied, the length of the general discussion is not limited and depends upon the length of time which the different groups wish to devote to it. The speaking time on each article, just as that for the defence of each amendment, is not limited either. However, when a group has used up all its allotted time, its members will no longer be allowed leave to speak and its amendments are put to a vote without debate.

Additional time is allowed to each group and to non-aligned members, upon the request of a group chairman, when the Government or a lead committee table an amendment after the expiry of the limits applicable to M.P.s. This additional time may only be used concerning the article or additional article to which the late amendment refers.

When the "set time limit for debate" procedure is applied, all the M.P.s who so wish have five minutes at the end of the examination of the articles, to give a personal explanation of their vote and this time is not deducted from the overall time of their group.

If the chairman of a group is opposed to it, the "set time limit for debate" procedure cannot be applied when the discussion of a bill on first reading occurs less than six weeks after its tabling or four weeks after its transmission.

2. – TRANSMISSION AND SUCCESSIVE READINGS

The bill, once adopted by the first assembly to which it was referred, is transmitted without delay to the other assembly which, in turn, examines it, on first reading, according to the same method: examination in committee, inclusion on the agenda, discussion in plenary sitting.

If the second assembly adopts all the articles of the bill without modification, then the bill is passed definitively.

If this is not the case, then the shuttle between the two assemblies carries on. As of the second reading, the articles which have been previously adopted in identical terms by the two assemblies are no longer voted upon: the shuttle no

longer deals with such articles now referred to as “in conformity”. The only articles which remain in discussion are those upon which the two assemblies have not reached agreement on a common text. The shuttle continues for a second, third, fourth reading or even more as long as all the articles have not been adopted in the same terms.

Nonetheless, the 1958 Constitution introduced an arbitration procedure which allows the Government to speed up the definitive vote on a bill by interrupting the normal course of the shuttle.

III. – RECOURSE TO THE ARBITRATION PROCEDURE: THE JOINT COMMITTEE

This arbitration procedure, after two readings of a bill in the two assemblies (or a single reading if the Government has announced in advance the implementation of the accelerated procedure), consists in convening a meeting of a committee with seven M.P.s and seven Senators (plus an equal number of substitutes) from which we get the name ‘joint committee’ (CMP).

The political make-up of these CMPs must reflect the composition of the assemblies. Thus during the XIIIth term of Parliament, four of the appointed members of these committees belonged to the UMP group which had an absolute majority in the National Assembly whilst the other three belonged to the SRC group[1]. In the Senate, the membership of the CMPs is not fixed but always reflects a balance of four Senators from the majority party in the Senate and three from the opposition. This applies both to the appointed members and to their substitutes.

This committee appoints its *Bureau*. The chairman of the joint committee is traditionally the chairman of the lead committee of the assembly where the joint committee meetings are held. The deputy-chairman is traditionally the chairman of the lead committee in the other assembly. The *Bureau* is also made up of two *rapporteurs*, one M.P. and one Senator, who are in charge of making a report on the committee’s work to their respective assemblies. Generally speaking these positions are held by the *rapporteurs* of the two lead committees.

During this meeting, the members of the joint committee attempt to find a compromise text for all the articles which are still in discussion. They can decide to maintain the version previously adopted by one or the other of the two assemblies or to draw up, for certain articles, a new version in order to reach a settlement.

There are no rules set down concerning the running of the debates in joint committee (the articles may or may not be called in their numerical order).

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1. Amongst the substitutes, three belonged to the UMP group, two to the SRC group, 1 to the GDR group and one to the “Nouveau Centre” group.

Votes are rare (if there has to be a vote on a provision, consensus, by definition, has not been reached) and are usually by show of hands. Substitutes vote only to maintain parity between the two Chambers.

The work of this joint committee is set down in a report. If the members of the committee draw up and pass a compromise text, then, this text is reproduced in the report. If this is not the case, then the report sets down the reasons why arbitration was not successful.

At this stage there are various avenues which can be followed in the procedure of the adoption of the bill, each with different consequences.

1. – THE JOINT COMMITTEE REACHES AGREEMENT ON A COMPROMISE TEXT

The Government may submit this bill for the approval of the first assembly, then the other. It may, in particular if the compromise text does not suit it, not require the two assemblies to make a decision on the bill. In this case, the shuttle begins again at the stage where it was interrupted and must continue until the bill is passed in identical terms by the two assemblies.

The discussion in plenary sitting on the conclusions of the joint committee report begins with a presentation by the *rapporteur* of the joint committee, followed by Government speeches, if necessary by a defence of the preliminary rejection motion and then by speakers enrolled in the general discussion. The discussion of the articles only deals with the discussion and vote on the amendments. During this reading, only Government amendments or those accepted by the Government can be tabled. The National Assembly then votes on the entire bill in the version drawn up by the joint committee which has possibly been modified by the amendments.

If each assembly passes the entire Government or members' bill in the version drawn up by the joint committee which has possibly been modified by the same amendments, then the arbitration procedure is a success and the bill is definitive.

2. – THE FAILURE OF THE ARBITRATION PROCEDURE: THE NATIONAL ASSEMBLY HAS THE FINAL SAY

If the compromise text is rejected by one or the other of the assemblies or if the amendments to the joint committee text are adopted by one assembly but not by the other, then the arbitration procedure has failed. A failure can also come about if the joint committee does not reach a compromise text. In these different cases, the Government has the possibility of granting the final say to the National Assembly.

This procedure has three stages which take place in the following order: a new reading by the National Assembly, a new reading by the Senate and the definitive reading by the National Assembly.

During the new reading, the National Assembly deliberates on the final bill adopted before the beginning of the arbitration procedure. This means that in the case of a bill tabled on first reading in the Senate, the National Assembly re-examines the bill which it passed in the end. This bill is examined in committee and is discussed following the normal procedure. The bill passed by the National Assembly is transmitted to the Senate which also examines it following the normal procedure. If the Senate adopts it without modification, then the bill is definitively passed. If not, it is transmitted to the National Assembly for a definitive reading. During the definitive reading, the National Assembly deliberates within very strict limits. It makes its decision upon a proposal of the committee, either on the bill drawn up by the joint committee, if there has been one, or on the bill which it adopted itself during the new reading. In this particular case, it may only adopt amendments which were adopted in plenary sitting by the Senate during its new reading.

IV. – SPECIFIC ADOPTION PROCEDURES

1. – THE SIMPLIFIED EXAMINATION PROCEDURE

The National Assembly has only a limited time for its plenary sittings. However Parliament is often called upon to deal with bills which certainly require the attention of the legislator, but which often are of a more technical than political nature.

It is largely for the consideration of such bills that the National Assembly possesses a simplified examination procedure. When this procedure is implemented there is no general discussion. Only articles on which amendments are tabled are put to the vote. There are no speeches on articles and for each amendment the only speakers permitted to take the floor, in addition to the Government, are one of the authors, the chairman or the *rapporteur* of the lead committee and one speaker against. When there are no amendments, the entire bill is immediately put to the vote.

The implementation rules of this procedure guarantee the M.P.s' right to speak and in particular that of the members of the opposition. In fact, although the procedure may be introduced by the Conference of Presidents upon the request of the President of the National Assembly, of the Government, of the chairman of the lead committee or of the chairman of a political group, a right to oppose the procedure is, at the same time, available to the same authorities (with the exception of the President of the National Assembly) right up until the eve of the discussion at 1p.m. If such a right is used, then the bill is examined according to the ordinary law procedure. Another guarantee is provided by the provision which states that the tabling by the Government of an amendment after the time limit for opposing the procedure has run out, automatically leads to the withdrawal of the bill from the agenda of the National Assembly. The bill may

then be included on the agenda for the following sitting and will follow the ordinary law procedure.

This simplified examination procedure is in practice usually applied to bills authorizing the ratification of a treaty or the acceptance of an international agreement. It is always preceded by the consideration of the bill in committee.

2. – THE "FORCED VOTE"

The forced vote, which is a procedure provided for in article 44, paragraph 3 of the Constitution, enables the Government to request one or the other assembly to make a decision in a sole vote on all or part of a text being discussed, keeping only the amendments proposed or accepted by it.

Government has broad leeway in the implementation of this procedure. It is free to choose the moment to announce its intention to use it. It also has the prerogative of defining the text to which the forced vote will apply: a part of the bill being discussed (one article or a group of articles) or the whole bill. It also decides upon the amendments which will be maintained.

The implementation of this procedure has the effect of eliminating a vote on the amendments and the articles which are subject to the forced vote. It does not enable the blocking of the discussion of all the articles and their corresponding amendments, including those not maintained by the Government.

3. – THE GOVERNMENT MAKES THE PASSING OF A BILL AN ISSUE OF CONFIDENCE

The Constitution (article 49, paragraph 3) allows the Prime Minister, after consultation in the Council of Ministers, to make the passing of a finance bill, a social security financing bill or once per session one other Government or Member's bill per session, an issue of confidence in the Government before the National Assembly. This procedure cannot be implemented before the Senate, as the Government is not directly accountable to that assembly.

As in the case of the forced vote, the Government is free to choose the moment when it makes the passing of a bill an issue of confidence and is free to choose the content of the bill on which it does so.

However, unlike for the forced vote, this procedure brings about the immediate suspension of the discussion of the bill in question.

From the moment that the procedure is introduced, a period of 24 hours begins during which M.P.s may table a censure motion.

A motion of censure is only admissible if it is signed by at least one tenth of the members of the National Assembly. If a motion of censure is tabled, its tabling is formally recorded. This motion is then discussed and voted upon in the time limits and under the conditions set by the Constitution and the Rules of Procedure of the National Assembly (the vote cannot be held within 48 hours of the tabling of the motion and the discussion must take place at the latest on the

third day of sitting after this time limit expires). The motion is only carried if it obtains a majority of the votes of the members making up the National Assembly. Only M.P.s in favour of the motion actually take part in the vote.

If no censure motion is tabled in the 24-hour limit or if the motion is not carried, the bill on which the Government has called for confidence is considered passed. Such a procedure only applies to the reading during which it is implemented and thus has no effect on the process of the shuttle.

If the censure motion is carried, the Prime Minister must tender the resignation of his Government and, in addition, the bill on which confidence was called, is considered rejected. Such a situation has not occurred in the lifetime of the Fifth Republic.

V. – PROMULGATION OF THE LAW

1. – PROMULGATION

The definitive passing of a Government or Member's bill in principle brings the parliamentary phase of the legislative procedure to a close and usually leads to the promulgation of the law.

The definitive bill is transmitted to the General Secretariat of the Government which is, in particular, in charge of presenting it for signature to the President of the Republic. The President of the Republic has the power to promulgate laws (i.e. to give them their binding power). The President of the Republic has fifteen days to promulgate the law. The law is then published in the *Journal officiel* of the French Republic.

However, the promulgation of a law may be delayed or stopped in two cases: the monitoring of the constitutionality of the law and a new deliberation on the law.

2. – THE EFFECTS OF THE MONITORING OF CONSTITUTIONALITY

The Constitutional Council is, among other powers, responsible for the monitoring of the conformity to the Constitution of the laws passed by Parliament.

a) Referral to the Constitutional Council

This monitoring takes place automatically in the case of institutional laws, i.e. laws so defined by the Constitution and which deal with the implementation of constitutional provisions.

For the other, so-called ordinary laws, this monitoring only takes place upon the request of certain authorities: the President of the Republic, the Prime Minister, the President of the Senate, the President of the National Assembly and, since the constitutional revision of 1974, sixty M.P.s or sixty Senators.

The referral must take place during the time limit for promulgation and it suspends this time limit. Upon referral, the Constitutional Council has one month to pass its decision or eight days in urgent cases if the Government so requests. Its decisions are binding on all and there is no recourse to appeal.

b) The effects of decisions of the Constitutional Council

When the Constitutional Council declares a law in conformity to the Constitution, the law may then be promulgated.

On the contrary, a decision which declares an entire law contrary to the Constitution blocks its promulgation. The legislative procedure which has led to the passing of such a law is annulled and the only solution is to return to the beginning, unless the reason for non-conformity constitutes a decisive obstacle which would require, for example, a prior amendment to the Constitution itself.

The Constitutional Council may also decide that a law is partly in conformity to the Constitution. In such a case, the law may be promulgated with the exception of the articles, or parts of articles which are contrary to the Constitution.

3. – THE NEW DELIBERATION REQUESTED BY THE PRESIDENT OF THE REPUBLIC

Within a fifteen-day time limit of the passing of the law by Parliament, the President of the Republic may also request a new deliberation of the law, in particular to find a solution to a declaration of unconstitutionality.

This procedure, which has only been used three times since 1958, is introduced by a decree of the President of the Republic countersigned by the Prime Minister. The time limit for promulgation is suspended. An additional phase of the legislative procedure is then opened as Parliament will be requested to begin again, for the entire bill or part of it, the examination of the bill it has just passed. This additional phase follows the rules of the ordinary legislative procedure previously described (tabling of the bill, shuttle and, if need be, arbitration procedure and finally definitive passing).

VI. – A SPECIFIC PROCEDURE: ORDINANCES

According to article 38 of the Constitution, “in order to implement its programme, the Government may ask Parliament for authorization, for a limited period, to take measures by ordinance that are normally the preserve of statute law”.

Several conditions are necessary for this to apply:

– An enabling law must be first passed by Parliament according to the aforementioned legislative procedure. This enabling law may result from an article of a Government bill but on no account may it result from a Member’s bill or from an amendment of parliamentary initiative;

- This enabling law must detail the legislative matters which could be the subject of ordinances;
- It must also set the time limit during which the Government may apply such ordinances;
- It must, in addition, detail the time limit provided to Government for the tabling before Parliament of its ratification bill.

Ordinances are discussed in the Council of Ministers but must be the subject of an opinion given by the *Conseil d'État* and must be countersigned by the Prime Minister and the relevant ministers as well as that of the President of the Republic.

If the Government provides no ratification bill upon the expiry of the set time limit, the ordinances become null and void.

When the Government has tabled a ratification bill, Parliament may ratify the ordinances and provide them with a legislative value or may not be called upon to debate them. In the latter case, the ordinances remain instruments of the regulatory authority. Since the revision of July 23, 2008, the Constitution states that ordinances may only be ratified in explicit terms and thus this excludes "implicit ratification" of ordinances which was a practice previously tolerated by the Constitutional Council.

File n°33

Government's Right to Initiate Legislation

"*Projets de loi*" or Government bills go through, before their tabling in Parliament, an arbitration phase within the Government, obligatory consultation of the *Conseil d'État* and adoption in the Council of Ministers.

In certain cases, the opinion of other institutions may be required beforehand (the Economic, Social and Environmental Council in particular).

☞ *See also files 2, 3, 7 and 10*

Although the right to initiate legislation is legally held by both parliamentarians and the Prime Minister, the vast majority of the laws passed in France are traditionally initiated by Government. Even when the laws authorizing the ratification or acceptance of international commitments are excluded, the percentage of laws whose origin was in a Government bill hovered around the 80% mark up to and including the XIIth term of Parliament.

This fact, which is a reflection of the primacy of the executive in the institutions of the Fifth Republic, is not limited to France.

The introduction, through the constitutional reform of July 23, 2008, of a shared agenda which facilitates the passing of a greater number of Members' bills has certainly contributed to modifying this situation. During the XIIIth term of Parliament, the share of Members' bills in the texts which were definitively passed, outside of conventions, continued to increase overall: from 25% during the 2007-2008 session, this figure reached 38.6% in 2009-10 and then slightly decreased to 35.8% in the 2010-2011 session. This proportion was once again very high for the last session of the term of Parliament but this was in the context of a rather atypical timetable.

I. – THE DRAWING-UP OF A DRAFT BILL

1. – THE ARBITRATION PHASE

To begin with, the departments and the staff of the relevant minister draw up a draft bill which must meet with the approval of all the ministers concerned.

In order to do this, inter-ministerial meetings are held. These are chaired by a member of the Prime Minister's staff and are attended by representatives of the ministers concerned.

In the case of a disagreement, the Prime Minister makes a ruling. The secretariat of these meetings (from the invitations to attend to the distribution of the minutes) is carried out by the General Secretariat of the Government. More than one thousand such meetings take place every year.

2. – THE CONSULTATION PHASE

The Government may request the opinion of the Economic, Social and Environmental Council on a bill.

In addition, the advice of various institutions is required for certain specific bills by the Constitution or by the law. Some examples are:

- The opinion of the Economic, Social and Environmental Council on draft programming bills of an economic, social or environmental nature;
- The opinion of the territorial assemblies of overseas units with a special status, on bills concerning them;
- The opinion of the Committee on Local Finances on bills dealing with the resources of territorial units.

All such official consultations are reported in the impact study which accompanies the bill.

3. – IMPACT STUDIES

In accordance with article 39 of the Constitution, after the constitutional reform of July 23, 2008, every draft bill is presented before the *Conseil d'État* for its opinion. An institutional act shall determine the conditions in which Government bills are tabled before the parliamentary assemblies.

In addition, the Institutional Act n°2009-403 of April 15, 2009, states that Government bills, upon their transmission to the *Conseil d'État*, shall be preceded by a presentation explaining their objectives and accompanied by an impact study. This impact study lays down in detail how the bill fits into European law and it sets down the mechanisms envisaged for its application, its economic, financial, social and environmental consequences, as well as its effect on public employment. It also explains the conditions which will apply to its implementation in the overseas territorial units.

Although the aforementioned procedure of preliminary assessment is the rule, the institutional law does make provision for bills of a very specific type. Certain bills, (constitutional bills, finance bills, social security financing bills, programming bills, bills concerning a state of crisis) are not subject to the rule concerning the presentation of a preliminary assessment. In fact, in the case of Government bills authorizing the ratification of a treaty as well as bills enabling the Government to enact ordinances, adapted assessments must be provided.

Article 39 of the Constitution provides the Conferences of Presidents of the assemblies with the possibility of opposing the inclusion on the agenda of a bill which does not comply with the conditions determined by the institutional law[1].

In the case of a disagreement between the Conference of Presidents of the relevant assembly and the Government, the Constitutional Council will make a decision.

4. – EXAMINATION OF THE BILL BY THE *CONSEIL D'ÉTAT*

a) The Procedure

The *Conseil d'État* is both the highest administrative court and the legal adviser to the Government. It is in this second role that it is automatically consulted by the Government on bills in accordance with article 39 of the Constitution.

The bill is transmitted to it by the General Secretariat of the Government. The *Conseil d'État* passes it on to one of its five administrative sections (Interior section, Finance Section, Public Works Section, Social Section and Administration Section) whose President appoints one or several *rapporteurs*.

Using the Government draft bill as a basis, the *rapporteur* draws up his own bill. It is this bill which is debated by the relevant section.

The *rapporteur's* bill is examined by the section in the presence of Government commissioners who are the representatives of the administration. The bill is first examined in its entirety and then article by article. The bill which emerges from this examination is, in turn, submitted to the general assembly of the *Conseil d'État* following the same procedure. It is then the task of the section *rapporteur* to defend the bill which emerged from the section stage, before the assembly.

This examination leads to the adoption by the general assembly of a definitive bill which represents the 'opinion' the *Conseil d'État* gives to the Government. The general assembly may also reject the bill. This opinion, which is not binding on the Government, is reserved for its use only. The Government

1. The Conference of Presidents has already been convened to ensure that an impact study associated to a Government bill is in conformity with the rules laid down by the institutional law. This was the case on April 27 and August 31, 2010 respectively on the bill concerning immigration and on that dealing with retirement pension reform.

may, nonetheless, transmit it unofficially to the *rapporteurs* of the bill at the National Assembly or the Senate, so as to allow them to better understand the intentions of the bill's author. The Government may also choose to make this opinion public.

For the opinion of the *Conseil d'État* to enlighten the Government, it is necessary that all the questions posed by the bill which is in the end submitted to the Council of Ministers, be, first of all, examined by the *Conseil d'État.* If the Government introduces new provisions between the examination by the *Conseil d'État* and that by the Council of Ministers, these provisions, once they have been passed by Parliament, will risk censure by the Constitutional Council for non-compliance with the consultation procedure of the *Conseil d'État* provided for in article 39 of the Constitution (Constitutional Council, decision n° 2003-468 DC of April 3, 2003).

An emergency procedure may also be implemented. In this case, the standing committee of the *Conseil d'État* examines the bill which has been submitted by the *rapporteur* without any prior examination in section. The use of this procedure is rarer.

b) The Field of Contribution

The examination of the bill by the *Conseil d'État*, deals with both content and form.

As regards the form, the *Conseil d'État* checks the structure of the bill, its compatibility with existing law and the respect of the rules of procedure.

As regards the content, the *Conseil d'État* examines the foreseeable effects of the bill in comparison with its aims.

Examination of the bill by the *Conseil d'État* limits the risk of a partial or complete annulment by the Constitutional Council if the bill is referred to it after the vote by Parliament. The *Conseil d'État* in fact examines the compatibility of the bill with the Constitution. It also checks that the bill meets the international conventions to which France is party as well as European Union law.

The Government is not bound by this opinion, but ignoring it has real risks.

II. – THE ADOPTION OF THE BILL BY THE COUNCIL OF MINISTERS AND ITS TABLING BEFORE ONE OF THE ASSEMBLIES

The draft bill which emerges from the *Conseil d'État* is examined by the Council of Ministers and then becomes a bill in the strict meaning of the term. Generally, the bill is no longer modified at this stage.

The bill is then tabled before one of the two assemblies, i.e. transmitted by the General Secretariat of the Government to the Table Office of the assembly concerned. In concrete terms, since 2008, this transmission is carried out electronically as the bill is sent by electronic mail.

The choice of the assembly where the bill is tabled is free (except for finance bills and social security financing bills which must, first of all, be examined by the National Assembly and for bills whose main aim is the organization of the territorial units which go for consideration, in the first place, to the Senate).

The bill is made up of three elements:

– The presentation of the case which explains the reason for the bill and its aims. This may contain a short explanation of each article;

– The "main body" which is the part of the bill put to a vote before the assemblies. In the case of framework laws and programme laws, it is supplemented by explanatory annexes;

– The impact study.

The bill is accompanied by a presentation decree to Parliament which states the bodies which have deliberated on it, determines the assembly before which the bill will be first tabled and appoints the members of Government who will support the bill before the two assemblies. This decree is signed by the Prime Minister and countersigned by the ministers so appointed. At this stage the Government can no longer modify the bill except by a "corrective letter". This customary procedure which is not provided for in any law, takes the form of a letter from the Prime Minister, directly correcting the content of a bill which has been previously tabled. This "corrective letter" is transmitted, like the bill, to the *Conseil d'État*. It leads to the reworking of the bill which will serve as the basis for parliamentary discussion.

III. – THE RIGHT OF AMENDMENT

According to article 44 of the Constitution, the Government, as well as parliamentarians, has the right of amendment. This was an innovation introduced by the 1958 Constitution and is a corollary of the incompatibility of office of a member of Government and a parliamentarian.

The Government, like the lead committee, is exonerated from the tabling time limits which apply to the amendments made by members of the assemblies. However, in the case of tabling outside of the said time limits, such limits cannot be applied to amendments to articles on which the Government or the lead committee has brought at least one amendment or to those which are liable to be jointly discussed with amendments introducing additional articles tabled by the same authors. Such time limits do not apply however to the tabling of sub-amendments.

In addition, contrary to the right of amendments of a parliamentarian, the right of amendments held by Government is not submitted to article 40 of the Constitution which only deals with parliamentary initiatives. However, the Government must respect the other conditions concerning the use of the right of

amendment set down by the Institutional Act of April 15, 2009. These include a written presentation and a summary of the objectives. Similarly, the President of one of the two assemblies could object to a Government bill on the grounds of article 41 of the Constitution. This provision aims at excluding from debate all subjects which are not matters for statute. In the case of a disagreement between the President of the relevant assembly and the Government, the Constitutional Council will make a decision.

File n°34

Parliament's Right to Initiate Legislation

Key Points

In legislative matters the right to initiate legislation may take two forms: the tabling of a complete bill (a Government bill, initiated, as its name suggests, by Government or a Member's bill, initiated by a parliamentarian) or the tabling of an amendment, i.e. a proposal for the modification of a provision in either of the aforementioned types of bill.

These two types of right to initiate legislation are shared by the Government and the members of the two assemblies. Nonetheless Parliament's right to initiate legislation is subject to certain restrictions laid down by the Constitution.

The balance between Government and parliamentary initiative as regards the tabling of bills is weighted clearly against the latter. However the implementation of a shared agenda has slightly modified this situation as the proportion of bills with a parliamentary origin amongst the overall number of bills passed continued to increase during the XIIIth term of Parliament.

☞ *See also files 30, 31, 32, 33, 37 and 38*

I. – THE EXERCISE OF PARLIAMENT'S RIGHT TO INITIATE LEGISLATION

1. – CONCURRENT EXERCISE

According to article 39, paragraph 1 of the Constitution, "both the Prime Minister and Members of Parliament have the right to initiate legislation". The Constitution lays down the principle of equality between the right of the Government and the right of Parliament to initiate legislation, even if other constitutional provisions set down restrictions which apply to bills that are initiated by Parliament.

The only exceptions to this equality of the right to initiate legislation are those bills for which the Government possesses, *de jure* or *de facto*, a monopoly on tabling. This is, first of all, the case for finances bills and social security financing bills in accordance, respectively with articles 47 and 47-1 of the Constitution. It is also the case for programming laws as well as, following institutional logic, for laws enabling the Government to take ordinances for

matters in the legislative field, and for laws authorizing the ratification or the acceptance of international treaties or agreements mentioned in article 53 of the Constitution. Parliamentarians have the possibility of tabling amendments on all these texts within, for the last two categories, certain conditions.

The corollary of the right to initiate legislation, i.e. the right to withdraw legislation, is also open to the Government and to M.P.s. The methods of the application of this right are set down by article 84 of the Rules of Procedure of the National Assembly. The author, or if there are several, the first signatory of a Members' bill, may withdraw it at any moment, but only up to its adoption on first reading.

2. – THE METHODS OF APPLICATION OF PARLIAMENT'S PRINCIPLE RIGHT TO INITIATE LEGISLATION

a) The Form of a Members' Bill

A Member's bill has two main parts. The "presentation of the case" puts forward the arguments of the author to support the legislative modification or the new provisions which he proposes. The actual prescriptive part, referred to as the "main body" must be drafted in the form of articles.

As for the content of a Member's bill, it must correspond to the "legislative field", i.e. to the area of legal matters which require being covered by a law. Article 34 of the Constitution lists the matters which fall within this field but several other constitutional articles make provision for coverage by the law (in particular those which refer to institutional acts) or imply it (by setting down principles of a constitutional value whose implementation depends on the legislator).

b) The Conditions for the Application of Parliament's Right to Initiate Legislation

Although the financial admissibility of a Member's bill is checked when it is tabled, such bills are not, in principle, submitted to the *Conseil d'État*, as is the case for Government bills. The constitutional revision of July 23, 2008, nonetheless states that "the President of either House may submit a Private Member's Bill tabled by a Member of the said House, before it is considered in committee, to the *Conseil d'État* for its opinion, unless the Member who tabled it disagrees". During the XIIIth term of Parliament the *Conseil d'État* gave seven opinions upon the request of the President of the Assembly.

In addition, Parliament's right to initiate legislation belongs individually to each member of Parliament. It is a prerogative which is normally carried out individually, in their respective assembly, by each M.P. and by each Senator. However, nothing prevents several M.P.s, several Senators or even the members of one or several political groups from coming together to table a single Members' bill. In practice, the same legislative question is often dealt with, in more or less different terms, by several distinct Members' bills.

c) The Specific Case of Draft Resolutions

Resolutions are non-legislative instruments passed by a single parliamentary assembly. Seven different types of draft resolutions can be listed:

- Resolutions dealing with modifications in the Rules of Procedure ;
- Resolutions dealing with the setting-up of a commission of inquiry;
- Resolutions dealing with the suspension of proceedings against or the suspension of detention of a member of Parliament in accordance with article 26 of the Constitution;
- Resolutions dealing with the indictment of the President of the Republic before the High Court of Justice in accordance with articles 67 and 68 of the Constitution (this is the only draft resolution which must be passed in identical terms by the two assemblies);
- European resolutions dealing with drafts of or proposals for acts of the European Communities and of the European Union submitted in accordance with article 88-4 of the Constitution as well as with any document issuing from a European Union Institution;
- European resolutions tabled in accordance with article 88-6 of the Constitution aimed at ensuring the respect by European institutions of the principle of subsidiarity;
- Resolutions tabled in accordance with article 34-1 of the Constitution which propose that the Assembly provides an opinion on a specific question. This new procedure was introduced by the constitutional revision of July 23, 2008.

The procedure for the passing of draft resolutions is identical within each of the two assemblies, to that applied to Members' bills, with the exception of draft European resolutions for which examination in plenary sitting is not systematic. A specific procedure is also applied to draft resolutions tabled in accordance with article 34-1 of the Constitution: the Government may, in particular, declare them inadmissible if it considers that their adoption or rejection would entail an issue of confidence or that they contain an injunction to it. In addition, they may not be sent to a committee and may not be amended.

d) Parliament's and Government's Right to Initiate Legislation: What Is the Balance?

The legislative procedure is more often initiated by Government than by Parliament, even though the latter has begun to do so more frequently since the introduction, in October 1995, of monthly sittings given over to a priority agenda set by the National Assembly and, especially as of 2009, of an agenda shared between each assembly and the Executive.

Traditionally, 80% of the laws passed, outside of international conventions, had their origin in a Government bill, thus reflecting the weight of the Executive

in the legislative process. With the introduction of a shared agenda, during the XIIIth term of Parliament, the share of Members' bills in the texts which were definitively passed, outside of conventions, continued to increase overall: from 25% during the 2007-2008 session, this figure reached 38.6% in 2009-10 and then slightly decreased to 35.8% in the 2010-2011 session. This proportion was once again very high for the last session of the term of Parliament but this was in the context of a rather atypical timetable. In addition, even if the majority of laws remain Government sponsored, their very wording is subject to modification, which can be large or small, through parliamentary initiative: the right to make amendments re-establishes a certain balance to which statistical analysis does not entirely do justice. In addition, since March 2009 and as a follow-up to the constitutional revision of July 23, 2008, the discussion of Government bills in plenary sitting deals, generally speaking, with the text which is passed in committee. This had already been the case since 1958 for Members' bills and it certainly increases the influence of parliamentary initiative on the content of the legislation passed by Parliament.

3. – THE RIGHT OF AMENDMENT OR THE DERIVED PARLIAMENTARY RIGHT TO INITIATE LEGISLATION

The right of amendment, i.e. the right to present modifications to the provisions of Government and Members' bills, is also recognized equally for parliamentarians and for Government. Article 44, paragraph 1 of the Constitution states, in fact, that "*members of Parliament and the Government shall have the right of amendment*".

The right of amendment includes not only the possibility of proposing the suppression, complete or partial, or the modification, general or specific, of articles of a Government or Member's bill, but also that of adding new provisions to the bill in the form of amendments introducing additional articles.

The Constitution, the Institutional Act of April 15, 2009 concerning the application of articles 34-1, 39 and 44 of the Constitution and the Rules of Procedure of the National Assembly set down the conditions in which the right to amendment may be used:

- Amendments must be presented in writing and accompanied by a brief explanation of their grounds. They may only deal with one article;
- They are subject to a time limit for tabling (generally speaking they must be presented to the Table Office at the latest, by 5pm, on the third working day before the consideration of the bill);
- They may be subject to prior assessment by the Committee for the Assessment and Monitoring of Public Policies upon the author's request and with the agreement of the lead committee;

– They are admissible, on first reading, if they have a link, even an indirect one, with the bill being discussed. The existence of such a link shall be judged by the President;

– After the first reading, the rule of the "funnel" shall be applied : amendments must have a direct connection with a provision which is still being considered. The only exceptions to this rule are for amendments aiming at ensuring the respect of the Constitution, at implementing coordination with bills being discussed or at correcting a mistake.

II. – RESTRICTIONS OF A GENERAL NATURE ON PARLIAMENT'S RIGHT TO INITIATE LEGISLATION

The bills and amendments put forward by members of Parliament are submitted to two restrictions of a general nature: financial inadmissibility (article 40 of the Constitution) and legislative inadmissibility (article 41 of the Constitution). The conditions of the application of these provisions during the legislative process have important differences.

1. – FINANCIAL INADMISSIBILITY

In accordance with article 40 of the Constitution, legislation initiated by parliament "are not admissible where their adoption would have as a consequence either a diminution of public resources or the creation or increase of an item of public expenditure".

In addition, the final paragraph of article 47 of the Law of August 1, 2001, which applies to all amendments whatever the bill they are made to, renders inadmissible the amendments which are not in conformity to the institutional rules concerning the finance acts, and in particular the exclusive power of the finance acts to govern certain matters only.

Similarly, article L.O. 111-7 of the Social Security Code makes provision for the inadmissibility of amendments that are contrary to the provisions of the institutional law concerning the social security financing acts.

Initiatives tabled by M.P.s are submitted, at the time of their tabling, to an automatic monitoring of their financial inadmissibility, which is carried out by various bodies of the National Assembly.

The Members' bills are transmitted, in accordance with article 89 of the Rules of Procedure, to a sub-committee of the *Bureau* of the assembly. This sub-committee carries out the monitoring of their admissibility.

It is necessary to distinguish, as far as amendments are concerned, between those tabled in committee and those in plenary sitting.

In the former case, it is the task of the chairman of the committee and, in case of doubt, the committee's *bureau*, to decide on the admissibility of an amendment as regards article 40 of the Constitution. This may be done, if

necessary, after consultation with the Chairman or the General *Rapporteur* of the Finance Committee. The amendments which are declared inadmissible are not considered by the committee. The Government or an M.P. may, at any time, invoke article 40 of the Constitution concerning a modification brought by a committee to the text of a Government or Member's bill, i.e. concerning an amendment adopted by a committee and introduced into a bill which will serve as the basis for the consideration in plenary sitting. Inadmissibility will be judged by the Chairman or the General *Rapporteur* of the Finance Committee.

In the case of tabled amendments concerning consideration in plenary sitting, it is the President of the National Assembly who is responsible for deciding on their financial admissibility. However, it is common practice for the President to almost always follow the advice of the Chairman of the Finance Committee or, failing that, of the General *Rapporteur* or of a member of the *bureau* of the Finance Committee appointed for that reason (article 98, paragraph 6 of the Rules of Procedure makes provision for this consultation "in the case of doubt"). All disputed amendments are thus sent, upon being recorded, to the Chairman of the Finance Committee, and his opinion plays a decisive role. When that opinion is that the amendment is inadmissible, the amendment is returned to the author. It is not even distributed and is not called during the discussion.

This monitoring procedure does not mean that financial inadmissibility cannot be applied later on to Members' bills and to amendments. This possibility, provided for by article 89, paragraph 4 of the Rules of Procedure, is granted to both the Government and to every M.P. In practice, at least for the amendments, such an objection is rarely made at this stage since the first verification, at the time of tabling, should have automatically eliminated all initiatives entailing inadmissibility.

Financial inadmissibility can however be objected to amendments which have been distributed. In this case, the judgement on admissibility is made in the same conditions as during the tabling, i.e. upon a decision of the President of the National Assembly made after consulting with the Chairman of the Finance Committee. Given the systematic examination of the financial admissibility of amendments upon their tabling, there is no real need for a new consultation, except in exceptional cases. This would be the case, for example, if the discussion were to bring to light a new fact which would call into question the opinion formulated concerning financial admissibility at the time of tabling.

It should be noted that the monitoring procedure on financial admissibility, set up by the Rules of Procedure, grants only parliamentary bodies the right to make decisions on questions of admissibility during the legislative procedure. In the case of a dispute on the admissibility of an amendment, in particular when the Government contests the admissibility stated by the relevant parliamentary authority, it is the decision of the latter which has primacy, without appeal, at this stage, over an external judge, as is the case in matters concerning "legislative" admissibility.

Decisions by parliamentary authorities in the field of financial admissibility can only be contested through the avenue of appeal to the Constitutional Council, in accordance with article 61, paragraph 2 of the Constitution, after passing of the law. The Constitutional Council has the power to judge if article 40 of the Constitution has been correctly applied in the course of the legislative procedure, whether it be in the case of decisions of financial admissibility or inadmissibility. In the latter case, however, the Constitutional Council considers that a matter may only be referred to it if the objection of admissibility has been raised before the Parliament.

2. – LEGISLATIVE INADMISSIBILITY

Article 41 of the Constitution provides that "if, during the legislative process, it appears that a Private Member's Bill or amendment is not a matter for statute…the Government or the President of the House concerned, may argue that it is inadmissible". In the event of a disagreement between them, "the Constitutional Council, at the request of one or the other, shall give its ruling within eight days".

A major difference between this procedure and that aimed at ensuring the respect of article 40 of the Constitution is that legislative admissibility is not systematically monitored at the time of the tabling of Members' bill or amendments. In fact, it requires the intervention of the Government or of the President of the National Assembly. This mechanism was originally aimed at protecting the field of matters for regulation, as set out in article 37, paragraph one of the Constitution and could only be applied, until 2009 by the Government alone. The constitutional revision of July 23, 2008, extended this possibility to the Presidents of the assemblies who can now, not only apply inadmissibility to the encroachment of the legislative field on the regulatory field through the bills and amendments of their colleagues, but can also do the same to Government amendments.

In implementing article 41 of the Constitution, article 93 of the Rules of Procedure of the National Assembly sets down that the inadmissibility of a Member's bill or of an amendment may be claimed at any time by either the President of the Assembly or by the Government. It also states that an amendment which takes the form of a provision of the bill resulting from the work in committee may also be subject to such a claim. The second and third paragraphs of article 93 respectively deal with the case of inadmissibility claimed by the Government and that claimed by the President of the National Assembly. If inadmissibility is claimed by the Government, it is the task of the President of the National Assembly to decide. If the President of the National Assembly is in disagreement with the Government, he refers the matter to the Constitutional Council. If inadmissibility is claimed by the President of the National Assembly, he must consult the Government and if the two do not agree, then the President of the National Assembly refers the matter to the Constitutional Council. In cases where the President of the National Assembly considers claiming inadmissibility

or must make a decision on inadmissibility claimed by the Government, provision is made for him to consult the Chairman of the Law Committee or a member of the *bureau* of this committee appointed for this reason.

In practice, the handling of legislative inadmissibility is, generally speaking, quite heavy and so its use has become quite rare. The last decision of the Constitutional Council taken in accordance with article 41 goes back as far as 1979 (decision n°79-11 FNR of May 23, 1979). The wording of article 93 of the Rules of Procedure of the National Assembly before the reform of May 27, 2009, provided for the suspension of the sitting or an automatic deferment in the case of the claiming of legislative inadmissibility when the President of the National Assembly was not chairing the sitting. The current wording renders such deferment or suspension optional.

File n°35

The Examination of Bills in Committee

Key Points

Government and Members' bills tabled before the National Assembly are sent for examination to one of the eight standing committees of the National Assembly. The other committees may give an opinion on all or part of the bill which has been tabled. An *ad-hoc* committee may also be set up.

The committee shall appoint a *rapporteur* from amongst its own members whose brief is to throw light on the work of the committee by presenting a report on the proposed bill and, where necessary, to produce the amendments which he considers necessary.

The committee may also organize hearings of the relevant ministers or of experts in the field. Such hearings shall be open to the press or to the general public.

After a presentation by the *rapporteur*, the committee holds a general discussion on the bill and then moves to an examination of the articles and the amendments pertaining to them. The bill emerging from such deliberations which are referred to in the report (containing in particular a general presentation, an analysis of each article and the ensuing debates as well as a comparative table) serves as the basis for the discussion in plenary sitting (except for finance bills, social security financing bills and constitutional revision bills which are discussed on the basis of the text originally tabled or transmitted).

Supplementary sittings are organized so that the committee may give its opinion, before the discussion in plenary sitting, on the amendments which were not submitted to it during the examination of the report.

Six months after the entry into force of the law, the *rapporteur* and another M.P., so that both the ruling majority and the opposition are represented, present an information report to the committee upon the publishing of the necessary application rules.

☞ *See also files 24, 32, 40 and 41*

I. – DECIDING UPON THE COMPETENT COMMITTEE

Government bills and Members' bills, once the latter have been declared financially admissible, which are tabled before the National Assembly, are sent for examination to the relevant lead standing committee. Where necessary, standing committees other than that deemed relevant, are permitted to give an opinion on the bill in question. In addition, since the reform of the Rules of Procedure of May 27, 2009, the European Affairs Committee (which is not a

standing committee in the sense of article 43 of the Constitution) may also provide its observations on any bill dealing with an area covered by the activities of the European Union.

1. – THE LEAD COMMITTEE

This committee may be either a committee especially set up in order to examine a given bill or one of the eight standing committees of the National Assembly.

a) Referral to a Standing Committee

Article 43 of the Constitution initially provided that the setting-up of an *ad-hoc* committee would be the rule and referral to a standing committee the exception. However in practice, in the vast majority of cases, standing committees retained the referral remit and the constitutional revision of July 23, 2008 drew a lesson from this reality by making referral of a bill to a standing committee the rule and the setting-up of an *ad-hoc* committee the exception.

The President of the Assembly decides upon the referral of a bill to a committee upon the tabling of the bill before the Assembly. This decision is taken according to the various remits laid down by article 36 of the Rules of Procedure of the National Assembly.

It is rare for a committee to contest such a decision. If there is a disagreement over areas of competence, or if the committee appointed as the relevant committee were to declare the bill beyond its remit, article 85, paragraph 2 of the Rules of Procedure of the National Assembly provides that, after a debate during which only the Government or the proposer of a bill and the chairmen of the committees concerned may speak, the President may propose to the National Assembly the setting-up of an *ad-hoc* committee. If this motion is rejected, then the President may submit the question of the choice of the relevant standing committee to the National Assembly.

b) Setting-up of an Ad-Hoc Committee

An *ad-hoc* committee may be set up, as of right, when the Government so requests (article 30 of the Rules of Procedure) or when one or several chairmen of political groups representing an absolute majority of M.P.s, ask for it (article 32 of the Rules of Procedure). In addition, it may be requested by the chairman of a standing committee, the chairman of a political group or by at least fifteen M.P.s (article 31 of the Rules of Procedure). Such a request is deemed to be adopted if no objection has been submitted by the Government, by the chairman of a standing committee or by the chairman of a political group. When such an objection is submitted, the National Assembly is required to vote on it after a limited debate.

The membership of an *ad-hoc* committee is restricted to 70 M.P.s (the committee may add at the most two non-aligned M.P.s to this number) and the

number of its members belonging to the same standing committee may not be more than 34 (article 33 of the Rules of Procedure). A chairman of a standing committee may now also chair an *ad-hoc* committee. This was not the case before the reform of the Rules of Procedure dating from May 27, 2009.

2. – THE POSSIBILITY OF REFERRAL FOR OPINION

Article 87 of the Rules of Procedure of the National Assembly enables standing committees to present an opinion on all or part of a Government bill, a Members' bill or on all or part of the credits for budget appropriation. In the case of the initial finance bill, it is customary that the seven standing committees, other than the Finance Committee, which is the lead committee in accordance with article 39 of the Institutional Act of August 1, 2001 (LOLF), present an opinion on the budget of the missions which fall within their remit. Thus logically, there is no referral for opinion in the case of the setting-up of an *ad-hoc* committee.

Since the constitutional revision of July 23, 2008 led to the debate in plenary sitting being based on the bill passed by the lead committee, the Rules of Procedure were changed so as to oblige the consultative committees to meet before the lead committee (article 87, paragraph 3 of the Rules of Procedure) so that their amendments could be considered and, where necessary, included in the bill discussed in plenary.

II. – EXAMINATION PROCEDURE

1. – THE DRAWING-UP OF A REPORT

Every committee which has a bill referred to it, whether it be a standing committee or an *ad-hoc* committee, a lead committee or a consultative committee, first of all appoints a *rapporteur* from amongst its members. The *rapporteur's* role is to throw light upon the work of a committee by presenting to it a report in which he lays down his views on the bill and, where necessary, proposes amendments.

So as to provide the committees with enough time to consider bills, the constitutional revision of July 23, 2008, set a minimum time limit of six weeks between the tabling of a bill and its examination in plenary sitting on first reading before the assembly to which it was first referred. The revision also set a minimum limit of four weeks between the tabling of a bill and its consideration in plenary sitting on first reading before the second assembly to which it was referred. These limits are no longer obligatory if the bill is examined in accordance with the accelerated procedure. Nonetheless the Constitution does impose a 15-day minimum limit before the first assembly referred to, in the case of an institutional bill.

With the assistance of one or more civil servants belonging to the secretariat of the relevant committee, the *rapporteur* begins his work by compiling information on the bill in question. This means that:

– He generally organizes meetings with the representatives of the relevant ministry or ministries (ministerial staff, central administrative departments etc.);

– He holds meetings, if he feels it necessary, with representatives of the various associations and socio-professional groups involved as well as with qualified figures;

– He gathers a broad range of documents on the subjects dealt with by the bill.

The special *rapporteurs* of the Finance Committee are the only *rapporteurs* provided with legal powers of investigation concerning the Executive. In practice, the other *rapporteurs* have no great difficulty in obtaining the information they require.

When the *rapporteur* deems it desirable that the committee hears other opinions than his own on a particular bill, he may suggest the organization of hearings with experts in the field. It is also quite usual for the minister(s) concerned to appear before the committee especially in the case of a Government bill.

The committee's *Bureau* may then publicize its work as it so wishes, in particular by allowing the press or the general public to attend them or by deciding upon a production or a televisual broadcast of its proceedings (article 46, of the Rules of Procedure of the National Assembly). The *rapporteur's* hearings are systematically open to all the members of the committee (article 46, paragraph 1 of the Rules of Procedure). The *rapporteur* of the lead committee is, in addition, required, when the time limit between the tabling and examination of the bill in plenary sitting is six weeks, to communicate to all the members of the committee a document setting down the state of his work during the week preceding the consideration of the bill in committee (article 86, paragraph 2 of the Rules of Procedure).

2. – EXAMINATION OF THE REPORT

Once the preparatory work has been completed, the examination of the report is included on the agenda of a meeting of the relevant committee. This examination in committee should usually take place on first reading in such a time period that the committee may conclude its work and that the bill passed by it may be made available to M.P.s at least seven days before its consideration in plenary sitting (article 86, paragraph 4 of the Rules of Procedure).

a) Attendance at Meetings

In addition to the members of the committee, the meetings concerning the examination of the report by the lead committee may be attended by interested members of the Government, as well as by members of other committees and therefore the initiator(s) of the Members' bill or of amendments (article 86, paragraph 6 of the Rules of Procedure) and the *rapporteurs* of the consultative committees (article 87, paragraph 2 of the Rules of Procedure).

Amendments may be tabled on the bill considered in committee by any M.P. up until 5pm of the third working day preceding the examination in committee, unless the chairman of the committee has decided otherwise (article 86, paragraph 5 of the Rules of Procedure). The Constitutional Council considers that this possibility granted to the chairman of the committee "*should allow the guaranteeing of the effective nature of the carrying-out of the right to amendment provided to parliamentarians by article 44 of the Constitution*".

The *rapporteur*, the consultative *rapporteurs*, if there are any and the Government, are not bound by this time limit concerning the tabling of amendments in committee.

b) Procedure of the Meeting

The examination phase begins with a general discussion which is opened by the *rapporteur's* presentation. However when the examination of the report has been directly preceeded by the hearing of a minister, the committee may decide that such a hearing and the ensuing debates may be considered as replacing the general discussion.

In all other cases, the committee examines the articles of the bill along with the amendments put forward by the *rapporteur* and the other members of the committee as well as those of M.P.s from outside the committee and of the Government.

Each committee chairman must ensure the conformity of the amendments tabled in committee to article 40 of the Constitution (financial admissibility). He may, in so doing, consult the Chairman of the Finance Committee so as to prevent the committee from including any inadmissible provisions in the bill to be discussed in plenary sitting, (article 89, paragraph 2 of the Rules of Procedure).

In addition, the consultative committees are bound to meet before the lead committee so that their proposals may be taken into account during the drawing-up of the bill to be discussed in plenary sitting (article 87, paragraph 3 of the Rules of Procedure).

Furthermore, the Government, whose presence during the consideration of bills in committee was a right provided for by paragraph one of article 45 of the Rules of Procedure but which remained largely unused until the coming into force of the new provisions on the legislative procedure in 2009, is now

frequently present during the examination of Government bills. The Rules of Procedure nonetheless exclude the Government from attending during votes concerning finance bills, social security financing bills and constitutional revision bills (article 117-1, paragraph 4 of the Rules of Procedure), which are not discussed in plenary sitting on the basis of the committee text.

The committee votes on each of the amendments defended and on each of the articles and then it concludes its work with a vote on the whole bill.

c) The Effect of Committee Decisions

The effect of committee decisions depends upon the nature of the bills submitted to it for examination.

Since March 1, 2009, amendments adopted by the lead committee for a Government or Member's bill have been immediately included in the bill which is then examined in plenary sitting in this modified form (whilst this rule only applied before to the consideration on first reading of Members' bills before the first assembly to which they had been referred). Now the only time that a bill discussed in plenary sitting is the one originally referred to the assembly, is when a bill cannot be drawn up by the committee, i.e. either when the committee votes to reject the bill or when it has not managed to complete its examination of the bill in time.

However, as regards constitutional revision bills, finance bills and social security financing bills, the discussion in plenary sitting is on the basis of the bill proposed by the Government or transmitted by the Senate. In these cases, the proposals made by the committees thus take the form of amendments which are subject to the same rules of financial admissibility and to the same conditions of examination as those of political groups or individual M.P.s.

d) Rules of Procedure

In principle, the Rules of Procedure applied in committee are those, *mutatis mutandis*, followed in the Chamber, with the exception of procedural motions which are no longer raised except during the general discussion of bills in plenary sitting.

In practice however, these rules are applied in a more flexible manner. Discussions generally take place in a relaxed atmosphere and decisions are taken with a minimum of formality: a vote by public ballot, which, because of the absence of electronic voting machines, could not take place in the same conditions as in the plenary sitting, is almost never requested. In addition, the "quorum" (i.e. the presence of a majority of members of the committee) whose checking can be requested by one third of the members present, is very rarely called for and has, in fact, lost much of its interest as a means of obstruction. If it is not reached, the vote may only be held at the following sitting which may now be held fifteen minutes afterwards as opposed to three hours previously (article 43 of the Rules of Procedure)..

e) The Drawing-up of the Report

The deliberations of the committee are brought together in a report which is distributed before the plenary debate. This document, which is often very long, includes:

- A general analysis of the bill, its context concerning the law which it modifies along with international comparisons, as well as an overall political judgement;
- An analysis of the content of each article as well the minutes of the ensuing debates (including the new articles which have been introduced by the committee);
- A comparative table showing, in separate columns, the legislation in force prior to the bill (or to the reference texts), the provisions of the original bill (or of that transmitted by the Senate) and the text adopted by the committee;
- The "*sommier*" or collection of the amendments not adopted by the committee;
- Where necessary, several information annexes: one on the European law applicable or being drawn up which recalls the positions taken by the Assembly through motions, another establishing the list of bills liable to be repealed or modified upon the examination of the new legislation and a third presenting the observations which have been collected on the impact studies accompanying the bill.

The bill which emerges from the committee's work will be printed and transmitted and will be the reference basis for the tabling of amendments in preparation of the examination in plenary sitting.

3. – THE EXAMINATION OF AMENDMENTS AFTER THE ADOPTION OF THE REPORT

Amendments which could not be tabled in time to be examined at the same time as the report, must be examined by the lead committee, the day before or the day itself of the plenary sitting, during one or several meetings held in accordance with article 88 of the Rules of Procedure of the National Assembly.

During such meetings the *rapporteur* may table amendments. If such amendments are accepted by the committee they will however be considered as amendments tabled by an individual M.P. and not as committee amendments.

If necessary, a final amendment examination meeting may take place before the opening of the discussion of the articles in plenary sitting (article 91, paragraph 11 of the Rules of Procedure).

4. – OTHER MEETINGS AFTER THE ADOPTION OF A REPORT

There are three other cases in which the committee may be reconvened when dealing with a bill under discussion:

– The committee may avail of the possibility granted by the Rules of Procedure to adopt an amendment with a view to its examination in plenary sitting, after the expiry of the time limit on the tabling of amendments (article, paragraph 2 of the Rules of Procedure);

– The adoption of a motion of referral back to the committee. In this case the committee must produce a new report within a time limit set down by the Government if the text is included on the priority agenda, or by the National Assembly in the opposite case (article 91, paragraph 6 of the Rules of Procedure);

– Before the 'explanations of voting', the National Assembly may demand a second deliberation on all or part of the bill if the Government or the committee request such a procedure or if the committee accepts such a request from an individual M.P. The committee must then produce a new report, usually verbal and immediate, on the provisions which have been returned (article 101 of the Rules of Procedure).

5. – THE PUBLIC NATURE OF COMMITTEE WORK

Detailed minutes of a committee's debates and votes are written for each meeting. These minutes are available on the internet site of the National Assembly in the « *Organisation et travaux en commission* » (Organization and Work in Committee) section. In addition, the report of the work of each committee is now drawn up mainly by a specific department (the Committee Report Department). Thus the requirement stipulated by the Constitutional Council has been fulfilled: "*that there should be a precise report of speeches made before committees, of the reasons given for the proposed modifications to the bills which have been referred to the committees and of the votes held within committees*".

These rules concerning the public nature have been strengthened by the reform of the Rules of Procedure of May 27, 2009 which provided the *bureau* of each committee with the task of organizing the public nature of the committee work through the means of its choice. The committees have now mostly opened up their hearings to the media and to the general public. The *bureau* of each committee may also decide to produce a televisual report of its works.

III. – THE ROLE OF COMMITTEES IN THE IMPLEMENTATION OF THE LAWS

M.P.s who had been *rapporteurs* to their committee on a legislative bill were naturally inclined to follow the implementation of such a bill personally and it happened quite frequently that information reports on the application of the bill were published several months after the law was passed.

A provision which was introduced to the Rules of Procedure in 2004, provided such assessment with a statutory framework. Six months after the

coming into force of a law requiring the publication of regulatory texts, the *rapporteur*, or failing this, another member of the committee, must produce a report detailing the necessary implementation decrees, circulars and instructions which have been introduced.

The implementation reports are not always limited to this aspect of the follow-up of regulatory texts and may enable the assessment of the legislative provisions which have been passed. At the end of his work, the *rapporteur* presents his conclusions before the relevant committee, in the presence of the member of the Government concerned who can, if necessary, explain the delay in the publication of certain regulatory texts or the problems met in the implementation of the legislation.

If implementation instruments have not yet been applied, the *rapporteur* must reappear before the committee before the end of a second period of six months.

In order to provide this work with a greater monitoring and assessment impact, the reform of the Rules of Procedure introduced the obligation of the appointment of two *rapporteurs* on each implementation report, one of whom has to belong to an opposition group (article 145-7, paragraph 1 of the Rules of Procedure).

File n°36

The Plenary Sitting

Key Points

The plenary sitting is one of the highpoints of parliamentary life because it is in the Chamber that laws are passed and that the Government may be held to account. One week out of four is, in addition, outside of the period of discussion of the budget, given over to the monitoring of Government action and to the assessment of public policies.

The plenary sitting is also called the "public sitting", thus testifying to the importance attached to the public nature of the debates. This constitutes an essential element in all parliamentary democracies.

The Rules of Procedure of the National Assembly give a special place and role to the main actors in the plenary sitting: the President of the National Assembly, the *rapporteurs,* the M.P.s. and the Government.

They also lay down the general rules of the debates and the votes and attempt to facilitate the expression of all shades of opinion.

☞ *See also files 19, 22, 23, 24, 25, 26, 27, 37, 44, 45, 46, 51, 72 and 76*

"The sitting is open". These words, spoken by the President or a vice-president of the National Assembly, mark the opening of an essential stage in parliamentary life: the plenary sitting. It is in fact in the Chamber that the M.P.s fully carry out the powers which have been granted to them by the Constitution: passing the law, monitoring Government action and assessing public policies.

The *raison d'être* of the plenary sitting is to ensure the public nature of debates for, without this, the representative system would cease to be a true democracy. In order for the plenary sitting to be run correctly, the main actors, the President of the National Assembly, the M.P.s and the Government, must have a place and a role which are strictly defined and the discussions themselves must respect certain rules.

I. – THE SITTING IS PUBLIC

"*The sittings of the two assemblies shall be public. A verbatim report of the debates shall be published in the* Journal officiel" (article 33, paragraph 1 of the Constitution).

This principle, set down by the Constitution, finds expression, first of all, in the fact that the general public can sit in the galleries, space permitting, and can attend the deliberations. It also requires the publication of a *verbatim* report in the *Journal officiel*. Special facilities are also made available to the press so that they may report on parliamentary proceedings. In addition, the opening-up of the plenary sitting to televised pictures since 1994, the creation of the internet site of the National Assembly and the setting up of a parliamentary channel, have all led to the broadening of the 'capacity of the galleries' to all citizens.

1. – THE PRESENCE OF THE GENERAL PUBLIC

a) The Galleries and Public Access

The various galleries which surround the Chamber enable the general public to attend the plenary sittings. 273 such seats are available. In addition, 191 seats are reserved for certain official dignitaries as well as for the "official state corps", in particular, the diplomatic corps and the prefectorial corps. 198 seats are also allocated to journalists of the French and foreign press.

Public access to the galleries is organized, at the National Assembly, by article 26 (XII) of the General Instruction of the *Bureau* of the National Assembly. Thus all the following, upon the verification of their identity, may attend the plenary sitting:

– The first ten people who appear at the *Palais Bourbon*;

– Those with a ticket for the sitting;

– Groups with collective authorization.

b) Dress code for the General Public

According to article 8 of the General Instructions of the Bureau of the National Assembly, the "*general public who are admitted into the galleries must remain seated, heads uncovered and silent. They may consult parliamentary documents and take notes*". In addition they must make no sign of agreement or disagreement.

c) An Exception to the Public Nature of Plenary Sittings: the Secret Committee

Article 33, paragraph 2 of the Constitution provides that each assembly may sit *in camera* upon the request of the Prime Minister or one tenth of its members. This provision was applied for the first time on April 19, 1940.

2. – THE OFFICIAL REPORT OF THE SITTING

In addition to the general public's right to access the Chamber, an official report of the debates is drawn up and is made available to every citizen.

Since 1848, there has been a full official report, which has been included in the *Journal officiel* since 1869.

a) Documents of the Transcription of Debates

The National Assembly nowadays ensures the public nature of debates in two ways:

– The verbatim report represents the minutes of the plenary sitting. Its publication in the *Journal officiel* (*Débats parlementaires - Assemblée nationale*) enables every citizen to be kept informed on the proceedings of the plenary sittings;

– The debates are broadcast live on the internet site of the National Assembly and live or recorded on the Parliamentary Channel and on other television channels (including France 3 for "Government Question Time"). The images filmed by the Audiovisual Department of the National Assembly are made available to these channels.

b) The Drawing-up of the Verbatim Official Report

This document is drawn up by the Sittings Report Department "*under the authority of the President of the National Assembly as well as of the Secretary General of the Assembly and of the Presidency*".

The debate drafters, who are in charge of the verbatim report, are seated at the foot of the speakers' rostrum. They replace each other every fifteen minutes. They take as detailed notes as possible on the speech of the main speaker without neglecting either interruptions or movement in the Chamber. Then, once they have returned to their office, they draw up a report with the help of a digital recording. The transposition into written language of speeches which are often improvised must respect the thought process of the speaker but nonetheless requires a certain tidying-up to eliminate the errors, inaccuracies and cumbersome turns of phrase of spoken language. For the legislative part of the debates, the official report must also be in conformity with the Rules of Procedure.

The work of the writers is revised and, if necessary, corrected by the "heads of sitting" who have, in their own turn, the responsibility of the official report of the sitting they have attended. The speakers may have access to their speeches before publication and may make purely formal modifications to them.

The official verbatim report of a sitting is made available as it is drawn up on the internet site of the National Assembly in the "*Travaux en séance*" ("Proceedings of sittings") section. Its completed version can be read there around six hours after the morning and afternoon sittings and the day after night sittings.

Once the definitive version of the report has been drawn up, it is transmitted and published internally and is immediately distributed and sent (on average within twenty-four hours) digitally to the *Journal officiel* which is in charge of its official printing.

3. – THE PARLIAMENTARY PRESS

The National Assembly has a broad policy of openness to the press and media in general. Over 350 French journalists are permanently accredited in the *Palais Bourbon*, as well as forty of their foreign colleagues from more than twenty countries.

Both public and private television companies frequently broadcast parliamentary debates and show extracts in their news programmes. Since 1957 television has become a familiar aspect of parliamentary life. In addition, since 1982, Government question time has been broadcast live on the France 3 channel. The broadcasts are shown every Tuesday and Wednesday at 3pm every week during the session. Pictures shot by the National Assembly are made available live and at all times to the channels.

An important step was made by the Law of December 30, 1999 which set up "The Parliamentary (TV) Channel". This is a true civically-minded television channel for both the National Assembly and the Senate and is a consortium of two companies which are legally separate. Its main themes are information, public awareness of civic issues and education and it aims at the broadest possible audience. The cable operators are obliged to carry it and it is available, in addition, through the technology of terrestrial digital television.

The various political groupings must, of course, be dealt with in an equal fashion by the television media. Thus the *Bureau* of the National Assembly, under whose supervision the broadcasting of debates has been carried out since the Law of June 27, 1964, has set up a sub-committee in charge of communication and the press from amongst its own members, to deal more specifically with this question.

II. – THE ACTORS IN THE DEBATE

The Chamber is above all else a place of work but it is also a type of "haven", for, apart from the M.P.s and certain public servants of the National Assembly, only the members of Government and their assistants are permitted entry.

The President of the Republic himself does not have access to the Chamber in accordance with the principle of the separation of powers. He communicates with the two assemblies by messages which he orders to be read (article 18, paragraph one, of the Constitution). He may only take the floor in front of Parliament when it has been convened for this reason in Congress (article 18, paragraph 2 resulting from the Constitutional Act of July 23, 2008).

Since 1993 several foreign dignitaries have been received in the Chamber. Since such events are not part of the plenary sittings in the constitutional sense, the sittings are neither declared open nor closed. For the first of such events, there was no dialogue opened between the guests and the M.P.s. However in

March 2005, Mr. José Luis Zapatero, President of the Government of the Kingdom of Spain, and in January 2006, Mr. José Manuel Barroso, President of the European Commission, both, after making introductory speeches, answered one question asked by a representative of each political group.

1. – THE M.P.S

On June 17, 1789 the representatives of the third estate came together in a National Assembly and invited their colleagues from the nobility and the clergy to join them. This act had huge consequences. Sovereignty was, from now on, shared between the King and the assembled representatives of the Nation.

Today, the National Assembly has 577 M.P.s. (this is the maximum number allowed in accordance with paragraph 3 of article 24 of the Constitution in its wording resulting from the Constitutional Act of July 23, 2008). Under the authority of the President of the National Assembly, the chairmen of the political groups divide the Chamber into sectors at the beginning of each Parliament. Once this division has been carried out, the chairmen allocate a seat within the sector which has been allotted to their group, to each of its members.

It is from his seat that the M.P. will vote by show of hands or by sitting or standing according to the procedures of ordinary law or by electronic vote when there is a public ballot.

It is also from his seat that the M.P. will take the floor after having been so allowed by the chairman of the sitting. The speakers' rostrum is reserved for the most important speeches. Other speeches are delivered from the benches.

2. – THE PRESIDENT OF THE NATIONAL ASSEMBLY

The President of the National Assembly, or the Vice-President who substitutes him, dominates the Chamber from his chair, (the "*perchoir*" or "perch") above the speakers' rostrum, which is that used by Lucien Bonaparte when he presided over the Council of the Five Hundred.

Article 52 of the Rules of Procedure states that "*the President shall open the sitting, direct its debates, enforce the Rules of Procedures and keep order; he may at any time suspend or adjourn the sitting*".

The main principle that he must uphold is to carry out his office outside of all political party considerations. Running the sitting requires the chairman to constantly pay attention so as to bring together two conditions which are absolutely essential to the proper conduct of the proceedings: he must make sure that the Rules of Procedure are observed and yet allow all opinions to be expressed.

The high number of sittings means that the President of the National Assembly cannot always chair the proceedings. Thus six Vice-Presidents take turns along with him in the chair. The distribution of these positions is carried out within the *Bureau*, so as to respect the political make-up of the Assembly.

3. – THE PRESIDENT OF THE SITTING

In accordance with the Rules of Procedure, the President opens the sitting. This procedure is not only formal. As long as the ritualistic words "*the sitting is opened*" have not been spoken, no one has the right to take the floor.

a) Announcements, before the Examination of the Matters on the Agenda

Before moving to the agenda, the President of the sitting announces to the Assembly information which concerns it (such as the resignation or replacement of an M.P.) and then the official messages from the Prime Minister (such as the convening of Parliament in extraordinary sitting). The President may also officially greet, on behalf of the Assembly, any delegation of foreign parliamentarians who may be in the galleries and who have been officially invited by one of the bodies of the Assembly. He may also express the deep feelings of the Assembly following a particularly dramatic event or he may pay homage to the memory of an M.P. who has passed away during his term of office.

b) Chairing the debates

In accordance with article 52 of the Rules of Procedure, the President enforces the Rules of Procedure and keeps order. He gives the floor to the speaker and he may also ask the speaker to conclude when he feels that the Assembly has been sufficiently informed. He may take the floor away from the speaker if the latter strays from the question being debated or, on the contrary, he may allow him, in the interest of the debate, to continue his speech beyond the time limit originally allotted to him.

The President adjourns the sitting and may suspend it, if necessary.

To assist him in his task, particularly in the framework of the "set time limit debate" procedure (see later), the President has information on the speaking time which has passed. This is provided by a timing device. In the case of a need to call for order, he may cut off all the microphones in the Chamber. If order is not restored he may suspend the sitting.

The examination of legislative bills (which may entail a large number of amendments) requires great vigilance on the part of the President. He is helped in this task by the civil servants of the General Secretariat of the Presidency and of the Table Office who sit behind him. The quality of the way the laws passed are written and even their internal coherence may depend, in fact, on the order in which amendments are called and on their compatibility.

4. – THE CHAIRMEN AND *RAPPORTEURS* OF COMMITTEES

The chairmen of committees and the *rapporteurs* who are appointed by the committees play an essential role in plenary sitting. They have special seats on the "committee bench" in the front row.

The *rapporteur* is the centrepiece of the legislative procedure and plays a double role: he studies the bill with a view to its examination by the committee and he presents, in plenary sitting, the bill adopted by or the positions taken by the committee in the case of texts concerning which the discussion deals with the actual Government bill or the bill transmitted by the other assembly (constitutional revisions, finance bills or social security financing bills). His speeches enable the M.P.s to come to an understanding of the bill under discussion. In addition to his general presentation, the *rapporteur* gives the opinion of the committee on each of the amendments proposed.

The chairman and the *rapporteur* of the committee have many prerogatives. For instance, they have an unreserved right to speak. Their speeches are not counted in the overall time allotted to their group within the framework of the set time limit debate procedure. They may, by right, request and obtain suspension of the sitting, a vote by division, a vote by public ballot, deferment (which changes the order of the discussion) and second deliberation (whose aim is to ask the Assembly for a final modification of the bill under discussion). They are aided by public servants of the National Assembly.

The *consultative rapporteurs* are responsible for presenting the text or the report of the committee which has appointed them and, along with the *rapporteur* of the lead committee, have the right to speak on the amendments. They do not, however, have the other powers which the Rules of Procedure grant to the *rapporteur* of the lead committee. Their speeches are not counted in their group's time allotment when the set time limit debate procedure is applied.

5. – THE CHAIRMEN OF POLITICAL GROUPS

Before the debate in the Chamber, the chairmen of the political groups bring their M.P.s together to decide on the position the group will take publicly, to set out the tactics to be followed and to determine how they will vote, especially when it comes to a final ballot.

During the actual sitting, they may obtain, by right, suspensions of the sitting to bring their group together or public ballots on the decisions they consider to be the most important. In the case of absence they may confer their prerogatives to a member of the group whom they appoint. However, they must be present in person in the Chamber if they wish to request, before a vote, the checking of the "quorum", i.e. the presence on the premises of the National Assembly of an absolute majority of members of the Assembly. (This procedure requires, since the reform of the Rules of Procedure of May 27, 2009, that the majority of M.P.s representing the group which has requested the quorum be present in the Chamber.)

Within the framework of the set time limit debate procedure the group chairmen have specific prerogatives (see below, III-1-e).

6. – THE GOVERNMENT

In the first row of benches, beside the committee bench, is the "ministers' bench".

The Government is systematically represented by one of its members during the debates. The exceptions are rare (the only cases have been when draft resolutions have been discussed). The Government may speak at any moment. Nonetheless, no matter how important the powers that it has are, the Government must always use them within the rules and customs recognized within Parliament.

Government bills which are tabled by the Prime Minister, in accordance with article 39 of the Constitution, are introduced by a minister, in charge of presenting the case and of supporting the discussion. In most legislative debates, this minister sits alone on the Government bench.

The Prime Minister may ask the National Assembly for its confidence on his Government's programme or on a statement of general policy. He may also ask for its confidence on the voting of a finance bill or of a social security financing bill or once per session on another Government or Member's bill. In addition, in cases where confidence in the Government is called into question by the tabling of a censure motion, it is the task of the Prime Minister to defend his Government's policy. He may also present the most important bills. Similarly, he may reply to questions put to the Government on issues which he feels may require him to do so from a political point of view.

The Minister in Charge of Relations with the Parliament represents the Government at the National Assembly. He is kept informed of the proceedings of all the debates and makes sure that such proceedings are compatible with the agenda which has been set down. He is the permanent interlocutor with the bodies of the Assembly and attends the weekly meetings of the Conference of Presidents.

The discussion of a Government or a Member's bill is the opportunity for a constant dialogue between the M.P.s and the Government. During this dialogue the Government may take the floor when it so requests and has prerogatives which the Rules of Procedure grant it and which are also granted to the standing committees. Thus, upon request, the Government will obtain a suspension of sitting, a public ballot, deferment and a second deliberation. In addition, the Government may, in particular use the weapons which the 1958 Constitution grants it: the passing of a bill without a vote in the conditions described above (article 49, paragraph 3), the objection of legislative inadmissibility (article 41), objection to the discussion of amendments which have not been submitted beforehand to the committee (article 44, paragraph 2), the "forced vote" on all or part of a bill under discussion retaining only those amendments proposed or accepted by the Government itself (article 44, paragraph 3).

III. – THE RUNNING OF THE DEBATE

The date and the time of sittings are determined by the regulatory and constitutional provisions. The structure of the sitting will depend on the nature of the tasks carried out by the M.P.s: in the Chamber the Assembly passes the law but it also monitors Government action and assesses public policies.

1. – THE ADOPTION OF THE LAW

The discussion of a legislative bill in plenary sitting usually takes place in several phases: the examination of any procedural motions, the general discussion and the discussion of articles and amendments which are proposed to them.

The debates deal with the bill adopted by the committee: the only bills which are considered on the basis of the text tabled by the Government or transmitted by the other assembly are constitutional revision bills, finance bills and social security financing bills. The rules however differ according to whether or not the "set time limit debate" procedure has been implemented.

a) *Procedural Motions*

Preliminary rejection motions (whose aim is to have a bill recognized as being contrary to one or several constitutional provisions or to have a decision taken so that there will be no discussion and whose adoption leads to the rejection of the bill) and motions of referral to committee (whose effect, if carried, is to suspend discussion until the committee presents a new report) are examined before the general discussion except during a sitting given over to the opposition or a minority group. In the latter cases procedural motions are debated at the end of the general discussion.

Since the changes in the Rules of Procedure which were introduced in June 2006 and May 2009, the defence of such a motion is limited to thirty minutes on first reading and fifteen minutes as of the second reading, unless decided otherwise by the Conference of Presidents.

b) The General Discussion

The general discussion is organized by the Conference of Presidents which sets the overall speaking time limit, according to the importance of the subject and the observations of the group chairmen. This speaking time is allotted to the groups using a weighted proportional system which guarantees a minimal speaking time to the smallest groups.

Each group chairman declares, within a specific time limit provided by the presidency, the names of the speakers appointed to take the floor and the time allotted to each of them. Generally speaking, each group gives over a substantial amount of its time to a spokesperson whom it enrols, in most cases, as the first of its speakers.

At the presidency's behest, the order of speakers is decided in such a way as to allow an alternation between groups. Thus, as one debate follows another, each group can be certain of having for itself the coveted position of "first speaker".

During the sitting, the President is responsible for making sure that each speaker remains within the time limit allotted to him. The M.P.s who speak at the rostrum may consult a timing device which is situated right beside the microphones. A red light, which is in the same place, flashes when the speaking time has been used up.

c) Speeches on Articles and Amendments

Speeches made during the examination of the articles of Government and Members' bills and the corresponding amendments tend to be much more specific and technical.

On the articles themselves, each M.P. may, of his own initiative, enrol to speak for a period of two minutes. The Assembly then moves on to the discussion on the amendments. At this time, the following may take the floor for five minutes: the author of the amendment; the chairman or the *rapporteur* of the lead committee; the chairman or the *rapporteur* of the consultative committee; the Government (whose time is not limited); one speaker against the amendment.

Although this phase of the debate is highly regulated, it often leads to lively exchanges. In the interest of the discussion, the chairmen of the sitting often allow interruptions which lead to two sets of arguments being put forward. In addition, as article 56 of the Rules of Procedure provides, they may "*allow a speaker to reply to the Government or to the committee*". Certain important amendments thus lead to broad discussions.

d) The Use of the Set Time Limit Debate Procedure

The Set Time Limit Debate Procedure, which is provided for by articles 49 and 55 of the Rules of Procedure, allows the Conference of Presidents to fix the length not only of the general discussion but also of the entire examination of a bill, including the consideration of its articles. Its use is an option. The Set Time Limit Debate Procedure cannot be applied to finance bills, to social security financing bills nor to constitutional revision bills.

The Conference of Presidents sets the time allocated to groups and to M.P.s who are non-aligned. The 'committees' and Government's speaking time is not limited.

The setting of the time limits is carried out in respect of the principles contained in the Rules of Procedure and which are aimed at ensuring the right of speech for groups in general and for opposition groups in particular (the latter have around 60% of the overall group speaking time). The chairmen of groups may avail of prerogatives which allow them, where necessary, to have the

speaking time allotted to a group increased (the set time limit is extended) or even to oppose the implementation of the Set Time Limit Debate Procedure.

As the speaking time is taken overall, most speeches are not subject to a specific limit (this is the case, for example, concerning speeches on procedural motions, on an article or on an amendment).

All the speeches made by M.P.s are deducted from the overall group time limit. There are several exceptions to this rule: speeches made by a chairman or *rapporteur* of a lead committee, by the *rapporteurs* of consultative committees if there are any and in addition by group chairmen. All the latter may speak for one hour maximum when the Set Time Limit Debate Procedure has been fixed by the Conference of Presidents at forty hours or less and for two hours in cases beyond this limit.

When a group has used up the time which it has been allocated, leave to speak will no longer be given to its members. An amendment tabled by an M.P. belonging to such a group shall be voted upon without debate. The chairman of the group can no longer request a public ballot, except on the overall bill. Nonetheless the chairman of the sitting will request the opinion of the committee and of the Government on the amendments tabled by the members of this group so that the vote of the Assembly shall be made clear.

e) Votes

During the consideration of a bill in plenary sitting, all votes are public and take place:

- By show of hands (or by standing and sitting in the case of doubt after a show of hands);
- By ordinary public ballot (this vote is held by right upon a decision of the President of the National Assembly or upon a request by the Government, by the lead committee or by the chairman of a political group). It may also be decided upon by the Conference of Presidents, when the latter wishes to hold a "formal" vote for the most important bills. It takes place electronically.

2. – MONITORING AND ASSESSMENT

M.P.s may also carry out, in the Chamber, their constitutional mission of monitoring Government action and of assessing public policies.

Furthermore, article 48 of the Constitution, in its wording as of March 1, 2009, gives over one week of sittings out of four to monitoring and assessment, with the exception of the consideration of finance bills and social security financing bills for which the Government has priority.

In addition, in accordance with the last paragraph of article 48 of the Constitution, "during at least one sitting per week, including during the

extraordinary sittings, priority shall be given to questions from Members of Parliament and to answers from the Government".

These monitoring and assessment activities may, in plenary sitting, take a variety of forms.

a) Making Government Accountability an Issue of Confidence

The power to call into question, by means of a vote, the very existence of the Government which constitutes the first characteristic of a parliamentary regime, may be carried out in the Chamber.

Article 20 of the Constitution states that the Government "shall be accountable to Parliament in accordance with the terms and procedures set out in articles 49 and 50".

Article 49 of the Constitution sets down three procedures making Government accountability an issue of confidence before the National Assembly: the Government making its own programme or a statement of general policy an issue of confidence (paragraph 1), the tabling of a motion of censure by M.P.s (paragraph 2) and the making of the passing of a bill an issue of confidence by the Government (paragraph 3). In accordance with article 50, this issue of confidence may lead to the resignation of the Government tendered by the Prime Minister to the President of the Republic.

In such cases debates are organized by the Conference of Presidents and the vote is held by public ballot at the rostrum. In order to speed up the procedure, the vote may also be held in the rooms adjoining the Chamber. This means that several polling stations may be opened and is a practice which has become systematic in recent years.

b) The Monitoring Week

The agenda of the monitoring and assessment week is set by the Assembly upon a proposal of the Conference of Presidents. The Assembly may however include legislative texts on this agenda.

This week may be given over to debates on Government statements, to considering motions or to holding question sittings (see after). Debates may also be held on the initiative of a committee or of a group. The new article 48 of the Rules of Procedure provides that each chairman of an opposition or minority group may obtain, as of right, the inclusion on the agenda for this week of a subject in the field of assessment or monitoring.

Some of these debates initiated by M.P.s are liable to be based on the reports of committees dealing with, for example, the application of a law.

One sitting is reserved by priority for European questions.

The Committee for the Assessment and Monitoring of Public Policies, which is a new body set up in the National Assembly in 2009, may make

proposals to the Conference of Presidents concerning the agenda for the week given over to monitoring. It may, in particular, propose the setting-up, in plenary sitting, of a debate without a vote or of question sittings dealing with the conclusions of its own reports or of the reports of fact-finding missions.

c) Statements Followed by a Debate

Article 50-1 of the Constitution allows a parliamentary group to request the Government to make, before either of the two assemblies, a statement on a given subject which gives rise to a debate. The Government itself may also take the initiative to make such a declaration. It can decide that such a declaration shall give rise to a vote without making it an issue of confidence.

For the debate to which the declaration gives rise, the Conference of Presidents sets the overall speaking time limit allotted to groups and to M.P.s not belonging to any group. Half of the speaking time attributed to groups is allotted to opposition groups. Each half is then distributed, on the one hand, between the opposition groups and, on the other hand, between the remaining groups in proportion of their size. Each group has a minimum of ten minutes speaking time.

When the Government decides that its statement shall give rise to a vote, the Conference of Presidents may accept explanations of vote. In this case, leave to speak is given, for five minutes after the closing of the debate, to one speaker for each group. The vote is held by public ballot at the rostrum.

d) Motions/resolutions

Article 34-1 of the Constitution in its wording after the Constitutional Act of July 23, 2008, allows each assembly to pass motions/resolutions which must be tabled by M.P.s individually or by a group chairman in the name of his group.

A motion is the instrument by which an assembly provides an opinion on a specific question: its aim is not to make Government accountability an issue of confidence and the Government may declare it inadmissible if it considers that such is the case.

Motions are debated in plenary sitting: they are not sent for referral to committee nor may they have any amendments tabled to them.

Their inclusion on the agenda may be requested by the group chairmen, by committee chairmen or by Government.

This inclusion may not occur less than six full days after the tabling of the bill and may not concern a draft motion considered by the President to deal with the same subject as a previous motion included on the agenda during the same ordinary session.

e) Questions

The holding, every week, on Tuesdays and Wednesdays, of a sitting given over to questions to the Government, is one of the basic markers of the rhythm of parliamentary proceedings. The constitutional revision of July 23, 2008, took this into account by extending this procedure to extraordinary sessions (article 48).

Furthermore, the wording of article 133 of the Rules of Procedure after the motion of May 27, 2009, provides that:

- Every week, one half of the questions shall be asked by M.P.s of the opposition;
- During each sitting, each group shall ask, at least, one question;
- The first question shall be automatically allotted to an opposition or a minority group, or else to an M.P. belonging to no group.

To make the exchanges livelier and to allow for more questions to be asked, the speaking time allotted to each speaker, both M.P.s and Government members alike, has been limited, since March 1, 2009, to two minutes instead of the previous two and a half minutes;

As for the sittings of oral questions without debate, they involve the obtaining of a precise ministerial answer on a given subject which often concerns local issues. In the framework of the wording of the Rules of Procedure after the motion of May 27, 2009, oral questions without debate have taken a natural position during the week of monitoring on Tuesday and Thursday mornings. Half of the questions are asked by M.P.s of the opposition. The time available for each question is now set at six minutes: this includes the question itself, the Government's answer and the reply, if there is one, by the question's author.

In addition, several sittings of questions to a minister have been held in the framework of the monitoring weeks. The groups have great freedom in the minister(s) they can choose to question and such sittings are not necessarily based on prior parliamentary proceedings. The questions may deal with the entire remit of a minister or with a preordained topic. The Conference of Presidents lays down the rules for these sittings. Only three such sittings have been held and the last was on June 2, 2009 and it seems that this procedure has, for the moment, fallen into abeyance.

File n°37

The Use of the Right to Amend

Key Points

Nowadays, the right to amend is the main expression of the right of M.P.s to initiate legislation. Several thousand such amendments are tabled annually.

Although this right, which M.P.s share with Government, is free and unlimited, it nonetheless must follow a series of constitutional, institutional and regulatory provisions which are based on the notion of "rationalized parliamentarism".

The most important of these provisions deal with the financial admissibility (parliamentary amendments are not admissible in cases where their adoption would have as a consequence either a diminution of public resources or the creation or increase of an item of public expenditure) and the legislative admissibility (amendments must be matters for statute) of amendments.

There are other additional restrictions, in particular those dealing with the time limits on tabling, on the prior examination by the lead committee, on the link with the bill under discussion or on the restrictions which apply after first reading.

During the plenary sitting, the order in which amendments are called and the procedures concerning their discussion are strictly laid down in precise regulatory provisions which ensure that debates are organized in an orderly fashion and that all opinions are expressed.

☞ *See also files 32, 33, 34, 35, 36 and 38*

The right to amend is the right to have the parliamentary assemblies vote on modifications to texts which they examine. These texts may be Government bills, Members' bills or draft resolutions. It may be regarded as an "extension" of the right to initiate legislation. Over time, it has even, in many Parliaments, and in particular in France, become the main form of expression of M.P.s right to initiate legislation.

It has its basis in the first paragraph of article 44 of the Constitution which states that "Members of Parliament and the Government shall have the right of amendment". Since the constitutional revision of July 2008, this article declares even more precisely that this right "may be used in plenary sitting or in committee under the conditions set down by the Rules of Procedure of the Houses, according to the framework determined by an Institutional Act".

There are three main characteristics of the right to amend:

– It is a right shared between Government and parliamentarians;

– It is an individual or collective right (on the contrary of questions for example, amendments may be co-signed);

– It is an unlimited right (subject to limits laid down hereafter) which means that it may be used as a blocking tactic.

The general principle, which is laid down in article 45 of the Constitution, is that the right to amend can be freely used at the stage of the first reading of a bill: any amendment which, at this stage, has a link, even an indirect one, with the bill, is admissible. During the subsequent readings, amendments may only deal with provisions which are still in discussion and this thus excludes all amendments introducing new provisions. In addition, this right is set down in the Constitution which established its uses clearly in the context of "rationalized parliamentarism".

I. – THE FRAMEWORK OF THE RIGHT TO AMEND

The following rules are applicable to amendments and to sub-amendments alike. Nonetheless sub-amendments are not admissible when they contradict the meaning of the amendment or go beyond its scope. However the time limits concerning tabling do not apply to them.

1. – THE MONITORING OF THE FINANCIAL ADMISSIBILITY OF AMENDMENTS

a) General Principles

Article 40 of the Constitution states that amendments introduced by Members of Parliament shall not be admissible where their adoption would have as a consequence either a diminution of public resources or the creation or increase of an item of public expenditure. The wording of the article enables the introduction of an amendment which decreases a public resource as long as it is balanced by the increase in another public resource. However, it prohibits all compensation in the field of public expenditure.

Constitutional jurisprudence has made the scope of financial inadmissibility clear. Thus a decision was taken that it not only applied to State expenditure but also to that of other public entities and that the effect of the proposed measures was to be judged in relation to the bill under examination and to existing law if it were to be more favourable.

b) The Financial Admissibility of Amendments to Finance Bills and to Social Security Financing Bills

The monitoring of the financial admissibility of amendments to finance bills and to social security financing bills follows certain specific rules.

The rules pertaining to the finance bills have been loosened up since the examination of the 2006 Finance Bill, which was the first to be introduced in accordance with the institutional act of August 1, 2001 concerning finance laws.

This institutional law changed Parliament's method of monitoring the budget. It replaced the former division of credits by ministry, by appropriation and by budgetary item with a system setting out around 50 State missions (including 10 inter-ministerial missions) and within these around 170 programmes. Article 47 of the aforementioned institutional act states that the idea of public expenditure must be understood in the context of each mission and this now allows parliamentarians to propose, within the same mission, increases in the credits for one programme which will be balanced by a decrease in funding for another programme. In addition, parliamentarians may set up new programmes as long as they balance this increase by a decrease in the credits allocated to another programme in the same mission.

As for social security financing bills, paragraph IV of article L.O. 111-7-1 of the Social Security Code states that, as far as amendments dealing with the expenditure targets included in the finance act are concerned, the expenditure refers to each expenditure target per branch or to the National Health Insurance Expenditure Target (ONDAM).

This recent easing of the rules, introduced by the institutional law of August 2, 2005, enables parliamentarians to carry out arbitration within the National Health Insurance Expenditure Target or the expenditure targets .

c) Monitoring Procedures

It is necessary to distinguish between amendments tabled in committee and those tabled in plenary sitting.

In the first case, it is the task of the chairman of the committee and, in case of doubt, his *bureau*, to judge the admissibility of an amendment as regards article 40 of the Constitution. If necessary he may request the opinion of the Chairman or the General *Rapporteur* of the Finance Committee. Amendments which he declares inadmissible are not examined by the committee. The Government or an M.P. may, at any time, invoke article 40 of the Constitution concerning a modification which has been made by a committee to a Government or Member's bill i.e. an amendment adopted by a committee and included in the text which will serve as the basis for the discussion in plenary sitting. Such inadmissibility is decided upon by the Chairman or the General *Rapporteur* of the Finance Committee.

In the case of amendments which have been tabled with a view to their consideration in plenary sitting, it is the President of the National Assembly who is responsible for deciding on their financial admissibility. However, it is customary that the President almost always follows the advice of the Chairman of the Finance Committee or, failing that, of the General *Rapporteur* or of a

member of the Finance Committee appointed for that reason (article 89, paragraph 3 of the Rules of Procedure provides for such a consultation in the case of doubt). All contentious amendments are thus referred, upon their being recorded, to the Chairman of the Finance Committee and his opinion will play a decisive role. When the declared opinion is one of inadmissibility the amendment is sent back to the author. It is not distributed and will not be called for discussion.

This advance monitoring procedure does not mean that financial inadmissibility cannot be declared at a later stage for Members' bills and for amendments. This possibility which is provided for by article 89, paragraph 4 of the Rules of Procedure is an option both for the Government and for any M.P. However in practice a declaration of financial inadmissibility will rarely be made at later stages since the first check which is carried out at the moment of tabling, should have eliminated all initiatives which might run such a risk.

Nonetheless, financial inadmissibility can be declared concerning amendments which have been distributed. In this case the judgement concerning admissibility is carried out in the same way as upon tabling, i.e. upon a decision of the President of the National Assembly following an opinion of the Chairman of the Finance Committee. Given the systematic checking of the admissibility of amendments upon their tabling, such a new consultation would only occur in exceptional circumstances: this might be the case, for example, when the discussion brings to light new facts which might call into the question the opinion concerning admissibility which was reached at the time of tabling.

It should be noted that the procedure for the monitoring of financial admissibility which is laid down by the Rules of Procedure grants the power of decision-making on admissibility during the legislative procedure to parliamentary bodies and to parliamentary bodies alone. In the case of a dispute concerning the admissibility of an amendment, in particular if the Government were to contest the admissibility declared by the relevant parliamentary authority, it is the decision of the said authority which, at this stage, has primacy, without appeal over an external judge. This is the contrary of what is provided for in cases of "legislative" admissibility.

Decisions taken by parliamentary bodies in the area of financial admissibility may only be contested by means of appeal before the Constitutional Council, in the procedure laid down by article 61, paragraph 2 of the Constitution, after the law has been passed. The Constitutional Council recognizes its jurisdiction to decide whether or not a correct decision has been taken, during the legislative procedure, concerning the application of article 40 of the Constitution in the field of judgements on financial inadmissibility or admissibility. In the latter case however, the Constitutional Council considers that such a matter may only be referred to it if the objection of inadmissibility has been raised before the first assembly in which the amendment was brought.

2. – THE MONITORING OF THE LEGISLATIVE ADMISSIBILITY OF AMENDMENTS

Article 41 of the Constitution provides that "If, during the legislative process, it appears that a Private Member's Bill or amendment is not a matter for statute…the Government or the President of the House concerned, may argue that it is inadmissible". In case of disagreement between them, "the Constitutional Council, at the request of one or the other, shall give its ruling within eight days".

Initially, only the Government could claim inadmissibility and, in practice, the complexity of the procedure meant that it was only rarely used. By granting this right to the President of the National Assembly, the constitutional revision of July 23, 2008, intended to increase its use.

A major difference between this procedure and that which deals with the respect of article 40, is that legislative admissibility is not systematically checked at the moment of the tabling of Members' bills and parliamentary amendments: such monitoring requires the intervention of the Government or of the President of the National Assembly.

Thus, in application of article 41 of the Constitution, article 93 of the Rules of Procedure of the National Assembly provides that the inadmissibility of a Member's bill or of an amendment may be claimed at any moment by either the President of the National Assembly or by the Government. It also states that an amendment which takes the form of a provision of a text resulting from the work of a committee may also be subject to such a claim. The second and third paragraphs of article 93 respectively envisage the case of inadmissibility claimed by the Government and that of inadmissibility claimed by the President of the National Assembly. If inadmissibility is claimed by the Government, it is the task of the President of the National Assembly to make a decision. If the President of the National Assembly is in disagreement with the Government, he refers the matter to the Constitutional Council. If inadmissibility is claimed by the President of the National Assembly, he must consult the Government and in the case of disagreement with the latter, he must refer the matter to the Constitutional Council. In cases where the President of the National Assembly envisages claiming inadmissibility or must judge the inadmissibility which is claimed by the Government, it is provided that he may consult the Chairman of the Law Committee or a member of this committee who is specially appointed for this purpose.

3. – OTHER RESTRICTIONS TO THE RIGHT TO AMEND

a) Restrictions Linked to the Proper Organization of Parliamentary Debates

So that the discussion of the articles of a bill and the amendments linked to them may be ordered and coherent and so that each actor in the debate (Government, *rapporteur* and M.P.s) may be provided with the time to prepare the discussion, it is necessary to set down a date for the tabling of amendments.

The reform of the Rules of Procedure of May 27, 2009, institutionalized the time limits for tabling amendments in committee: amendments must be tabled at the secretariat of the committee, at the latest by 5pm on the third working day before the examination of the bill in committee. The reform modified the time limit for amendments tabled on a bill discussed in plenary sitting. This time limit is now also set at 5pm on the third working day before the examination of the bill in plenary sitting as opposed to the previous limit which had been, from 2006, 5pm on the day before the discussion.

The Constitutional Council accepted the setting of such time limits provided that the chairmen of committees, in the case of the examination of bills by their committee or the Conference of Presidents, in the case of the plenary sitting, could set another time limit if the limit fixed by ordinary law did not enable the respect of the "*needs for the clarity and regularity*" of the debates thus fully guaranteeing "*the effective nature of the right to amend granted to parliamentarians by article 44 of the Constitution*" (Decision n°2009-581 DC of June 25, 2009). As regards amendments in plenary sitting, the Institutional Act of April 15, 2009, states that in any case, M.P.s' amendments must, by obligation, be tabled before the beginning of the examination of the text in plenary sitting.

There are special time limits for the examination of the second part of the finance bill: amendments concerning the examination of credits must be tabled at the latest, at 1pm two days before the discussion and those on articles not concerning credits may be tabled the day before the discussion at 1pm.

Beyond these limits, the only amendments which are admissible are sub-amendments and amendments presented by the Government and the lead committees as well as amendments dealing with articles modified or added by a Government or lead committee amendment which was tabled after the time limit expired.

b) Inadmissibility Linked to the Subject of the Amendment

Article 98 of the Rules of Procedure of the National Assembly states that amendments shall only relate to a single article. Sub-amendments may not contradict the meaning of the amendment they refer to and shall not be amended. In addition, in accordance with article 45 of the Constitution, the same article 98 accepts the admissibility, on first reading, of any amendment which has a link, even an indirect one, with the bill which has been tabled or transmitted. In all cases, it is the task of the President of the National Assembly to judge the admissibility of the amendments so tabled, regarding the application of these provisions.

c) Restriction Linked to Examination in Committee

In accordance with article 44, paragraph 2 of the Constitution, the Government may object to the consideration of any amendment which has not previously been referred to a lead committee. This procedural weapon is usually

only used in the case of a clear filibustering tactic for amendments tabled after the last meeting of the committee.

d) Restrictions Linked to the Needs of the Legislative Procedure

As has been previously seen, the legislative procedure, based as it is on a system of "shuttles" between the two assemblies, attempts to gradually bring their two points of view closer together so that an identical bill will be passed by both Houses. Thus, it is logical that all the articles of a law which, at a certain stage in the procedure, have been passed in the same terms by the two assemblies, should no longer need to follow the "shuttle" and should no longer be modifiable by amendment. This is also the case for amendments which would call into question provisions which have been properly passed, by introducing incompatible additions to the bill. The only exceptions to the aforementioned rules would be in the case of ensuring coordination with other provisions, of correcting a mistake or of ensuring the respect of a constitutional provision.

After first reading, amendments must have a direct link with a provision which is still in discussion, with the exception of the three cases already stated. This rule which has been included in the Rules of Procedure of the assemblies for a long time, was progressively accepted by the Constitutional Council between 1998 and 2006. It prohibits, in principle, the introduction of additional articles at this stage of the "shuttle". In addition, the Constitutional Council has not hesitated to censure new provisions which have been introduced in the form of new paragraphs.

The text which emerges from the deliberations of the joint committee is also subject to specific restrictions regarding the right to amend based on the letter of article 45, paragraph 3 of the Constitution which makes provision that the only admissible amendments to this text are those made by the Government or made by parliamentarians and whose tabling has been accepted by the Government. These restrictions are justified by the need to avoid misrepresenting the agreement reached by the two assemblies on a common text

When the Government decides, in accordance with article 45, paragraph 4 of the Constitution, to give the final say to the National Assembly by means of a last reading called the "definitive reading", the only amendments which are admissible to the final bill passed by the National Assembly are those which have been previously passed in plenary sitting by the Senate during the new reading.

e) The Forced Vote

As a logical consequence of the existence of restrictive passing procedures which reflect the "rationalized parliamentarism" so designed by the framers of the 1958 Constitution, article 44, paragraph 3 of the Constitution authorizes the Government to request the Assembly examining the bill to decide by a forced vote on all or part of the bill under discussion. In this case the only amendments admitted are those proposed or accepted by the Government.

f) Restrictions Linked to the Nature of the Bill under Discussion

Given their very nature, the following texts may not be amended: texts of international conventions annexed to bills authorizing their ratification, motions aiming at putting certain bills to a referendum, motions tabled in accordance with article 34-1 of the Constitution and proposals made by the Conference of Presidents concerning the agenda.

II. – THE PHYSICAL PRESENTATION OF THE AMENDMENTS AND THE ORGANISATION OF THE DISCUSSION

1. – THE PHYSICAL PRESENTATION AND CIRCULATION

a) Physical Presentation

Amendments must be written down, signed by at least one of their authors and placed on the Table of the Assembly (i.e. in practice, handed in to the Table Office) or tabled in committee. The same requirements of written presentation apply to sub-amendments.

Each amendment consists of a statement which precisely sets out the proposed insertion in the bill, along with its content and a short presentation which briefly explains the reason for the amendment.

Upon the request of its author and if the lead committee agrees, an amendment may be the subject of a preliminary assessment by the Committee for the Assessment and Monitoring of Public Policies (article 146-6 of the Rules of Procedure of the National Assembly).

b) Circulation

The amendments and sub-amendments are printed, distributed and placed on-line on the site of the National Assembly. In practical terms, the M.P.s, both in committee and in plenary sitting, are given a bundle with all the amendments and sub-amendments listed by order of examination, (see below). Every amendment bears the name of its author. In committee, amendments may have as their authors, the Government, the *rapporteur*, if applicable the *rapporteur* of the consultative committee or the other M.P.s. In plenary sitting, there are Government amendments, lead committee amendments, consultative committee amendments and amendments from M.P.s. It should be underlined that amendments adopted by the committee after the meeting given over to the examination of the report, are included in the text which will serve as the basis for the discussion in plenary sitting (except in the case where the discussion is based on the original bill).

2. – ORGANIZATION OF THE DISCUSSION OF AMENDMENTS

a) Order of Calling

The way in which amendments are listed is very important as the passing of one amendment can have the consequence of the "dropping" (i.e. rendering obsolete) of all amendments proposing concurrent solutions.

The method used is based on two principles:

– From a formal point of view, the order of listing must go from the general to the specific: the deletion of an article is called before the deletion of a paragraph, and the latter is called before the deletion of a sentence which itself will come before the simple deletion of words etc.;

– As regards the meaning of the amendments, they are voted upon beginning with those which are furthest from the proposed text. These are followed, in order, by amendments which differ from the original text, which are to be inserted and by those to be added to it.

When several amendments, exclusive of each other, are in competition, the chairman of the sitting may have them discussed together so that the M.P.s can hear all the authors before the amendments are voted upon.

It should also be stated that amendments tabled by the Government or the lead committee have priority during discussion over those tabled by M.P.s on identical subjects.

Practically speaking, the order of calling is actually written down on a yellow sheet bearing the list of amendments in their order. This sheet is distributed to all the M.P.s present during a sitting and is placed on-line on the internet site of the Assembly.

b) Procedures during Discussion

During the examination of an amendment, the chairman of the sitting will successively give the floor to:

– The author, or one of the authors, of the amendment to present the subject and defend the purpose (amendments whose authors are not present are not called);

– The *rapporteur* or the chairman of the lead committee, who recalls the committee's position;

– If need be, the *rapporteur* or the chairman of the consultative committee;

– The Government;

– Finally, a speaker of the opposite opinion.

He may also give the floor to a speaker to reply to the Government or to the committee. When the Government's opinion and that of the committee are identical, only one speaker shall be authorized to reply to them.

The amendment is then put to a vote by the chairman of the sitting who will recall the opinion expressed by the Government and the lead committee.

It should be noted that the time allowed to present an amendment will differ according to the procedure which governs the examination of the Government or Member's bill to which the amendment applies. Generally speaking, speeches on amendments, other than Government speeches (which have no time limit) may not exceed two minutes. Nonetheless, if the Conference of Presidents has decided to fix a maximum length for the examination of the bill (the Set Time Limit Debate Procedure), speeches during the general discussion, on articles or on amendments are not limited as long as the time allotted to the group to which the speaker belongs, has not been used up. When a group has used up all its speaking time, its members may no longer speak. Their amendments are then put to a vote without debate.

ANNEX

Main Formulae for Amendments

So as to simplify the presentation of amendments, each of the paragraphs in the bills submitted to the National Assembly, is numbered. An amendment which refers to one or several paragraphs in a bill will thus refer to these numbers.

1. Deletions

Delete { this article. / paragraph **n**. / the n-th phrase in paragraph n.

In the n-th phrase in paragraph n., delete the words: "..."

2. Re-writing

Rewrite as follows { this article. / paragraph **n**. / the n-th phrase in paragraph n.

Substitute **in the place of paragraph n** the following paragraphs: "..."

Substitute **in the place of the n-th phrase** the following phrases: "...".

Substitute **in the place of the n-th and m-th phrases** of paragraph n the following phrase: "..."

3. Substitutions

In the n-th phrase of paragraph **n**, substitute for the words: "..."the words: "..."

Rewrite the beginning of this article thus: "..." (the rest without change).

From paragraph n: "..." (the rest without change)

the n-th phrase of paragraph **n**: "..." (the rest without change).

After the words : « … », rewrite the end of this article thus: "...".

From paragraph n: "...".

the n-th phrase of paragraph **n**: "..."

4. Insertions and additions

– After paragraph **n**,
Before paragraph **n**, insert the following paragraph: "..."

Complete this article with the following paragraph: "...".

– At the beginning of paragraph n,
After the n-th phrase of paragraph n, insert the following phrase: "..."
After the last phrase of paragraph n,

Complete paragraph n with the following phrase: "..."

– Rewrite the beginning of the n-th phrase of paragraph n thus: “...” (the rest without change).
In the n-th phrase of phrase of paragraph n, after the word(s): “...”insert the words “...”
Complete the n-th phrase of paragraph n by the word(s): “...”.

5. <u>Additional Articles</u>

ADDITIONAL ARTICLE

AFTER ARTICLE N, INSERT THE FOLLOWING ARTICLE: “...”

File n°38

The Financial Admissibility of Parliamentary Initiatives: Article 40 of the Constitution and Institutional Provisions (LOLF and LOLFSS)

Key Points

Article 40 of the Constitution limits the power of parliamentarians to initiate legislation in financial matters. It prohibits the creation or the increase of an item of public expenditure and only authorizes the diminution of public resources when such a measure is balanced by the increase of other public resources. In the case of credits released by finance bills, the Institutional Act of August 1, 2001, concerning finance acts, reduced the rigidity of this restriction by authorizing parliamentarians to carry out transfers between programmes within the same mission as long as the overall amount of funds allocated to the mission was not increased.

Beyond article 40 of the Constitution, the monitoring of financial admissibility encompasses the checking of the respect of the institutional provisions pertaining to finance laws and to social security financing laws.

☞ *See also files 37 and 40*

Article 40 of the Constitution, which has remained unchanged since 1958, provides that “bills and amendments introduced by Members of Parliament shall not be admissible where their adoption would have as a consequence either a diminution of public resources or the creation or increase of an item of public expenditure”.

This restriction on the right of parliamentarians to initiate financial measures is one of the constituent components of the “rationalized parliamentarianism” which characterizes the institutions of the Fifth Republic.

I. – THE PROCEDURE

The means of monitoring are set by article 89 of the Rules of Procedure.

In accordance with paragraph 5 of this article, the procedure which is set down hereafter is applicable in the same conditions to the respect of the institutional provisions (LOLF and LOLFSS)

1. – PRIOR TO TABLING

According to the jurisprudence of the Constitutional Council, "the respect of article 40 of the Constitution requires a systematic examination of the admissibility...of Members' bills and amendments formulated by M.P.s. This must be carried out prior to the announcement of their tabling" and "before they may be published, distributed and put to discussion" (decision n°2009-581 DC of June 25, 2009).

a) Members' Bills

In accordance with article 89, paragraph 1, of the Rules of Procedure of the National Assembly, the judgement of their admissibility is granted to a delegation of the *Bureau* of the National Assembly which shall refuse the tabling of Members' bills "*where it appears that their passing would have the results set out in article 40 of the Constitution*"

b) Amendments in Committee

Article 89, paragraph 2, of the Rules of Procedure of the National Assembly provides that inadmissibility will be decided, for amendments tabled in committee, by the chairman of the relevant committee and, in case of doubt, by its *bureau*.

The chairman of the lead committee may consult, if he feels it necessary, his counterpart on the Finance Committee.

c) Amendments in Plenary Sitting

According to article 89, paragraph 3, of the Rules of Procedure of the National Assembly, the President of the National Assembly must refuse the tabling of an amendment in plenary sitting when it appears clear that it would result in either a diminution of public revenue or the creation or increase of any public expenditure. In the case of doubt, he takes his decision after having consulted the Chairman of the Finance Committee.

In practice, the opinions of the Chairman of the Finance Committee are always followed by the President of the National Assembly.

2. – AFTER TABLING

The provisions of article 40 of the Constitution may be applied "at any moment" during the legislative procedure, by the Government or by any M.P., to

Members' bills and amendments as well as to modifications introduced by committees to bills which have been referred to them.

In such a case, it is the responsibility of the Chairman of the Finance Committee to decide upon their admissibility (article 89, paragraph 4, of the Rules of Procedure of the National Assembly).

II. – GENERAL PRINCIPLES: FIELD OF APPLICATION AND THE REFERENCE BASE

1. – THE FIELD OF APPLICATION

Article 40 of the Constitution is aimed at public resources and expenditure. Its field of application covers State resources and expenditure, those of territorial units and authorities and the various social security bodies (with the exception of complementary systems).

By extension, article 40 can be applied to public bodies receiving public financing: public establishments of an administrative nature and to most public industrial and commercial establishments. Article 40 does not, however, concern public companies and professional training organizations.

2. – THE REFERENCE BASE

The reference base is the comparative term chosen to decide the "cost" of an amendment, i.e. either the loss in revenue or the creation of or increase in expenditure it would generate.

The following are the possible reference bases:

– Existing law (legislative and regulatory laws in force);

– Proposed law (bill under discussion).

The choice between these two bases is always, in theory, made on the side of that which is most favourable to the parliamentary initiative.

III. – THE RELATIVE OUTLAWING OF DECREASING PUBLIC RESOURCES

Article 40 of the Constitution prohibits the diminution of public resources by parliamentary initiative. The use of the plural form of "resources" has the effect of authorizing the balancing of the loss of one form of revenue by the increase in another form of revenue.

This balancing, usually referred to as the "guarantee", conditions the admissibility of an amendment or of a Member's bill which would lead to a decrease in revenue. The balancing must benefit the authority or the body which undergoes the loss in revenue. Thus, it is not possible to balance a loss in resources for the State by an increase in taxes received by territorial units.

The guarantee must be real and the revenue which is generated by it must be received in real terms. It is however accepted that the guarantee may consist of the creation of a new tax or the increase in the rate of an existing tax "at the same level" as the loss of revenue thus balanced. This practice makes the writing of amendments easier. In practice, during discussion in plenary sitting, the Government very often abolishes the guarantee before the passing of an amendment which it has decided to accept or not to oppose.

IV. – THE ABSOLUTE OUTLAWING OF INCREASING PUBLIC EXPENDITURE

Article 40 of the Constitution may be applied to a parliamentary initiative which creates or increases an item of public expenditure. The use of the singular has the effect of prohibiting any type of balancing: the creation or the increase of an item of public expenditure cannot be guaranteed either by an increase in revenue or by a decrease in expenditure. Thus the fact that the creation of a new item of expenditure may lead to more than proportional savings elsewhere has no effect as regards article 40: the amendment or the Member's bill will be inadmissible.

The definition of items of expenditure covers direct and certain expenditure but also potential or optional expenditure; thus amendments which open up the legal possibility of spending are inadmissible.

However, simple management expenditure is not inadmissible as it is defined as a measure whose cost for public finances could apparently be covered by the mobilization of already existing administrative means without extending the missions of the bodies concerned. The same applies to non-prescriptive provisions and requests for reports, which are always financially admissible.

Thus article 40 is extremely severe regarding expenditure matters whilst it is, in practice, much less restrictive concerning parliamentary initiative in the area of revenue.

V. – AMENDMENTS TO FINANCE BILLS AND SOCIAL SECURITY FINANCING BILLS MUST RESPECT BOTH ARTICLE 40 AND THE INSTITUTIONAL PROVISIONS

1. – FINANCE BILLS

Since the introduction of the Institutional Act of August 1, 2001 concerning finance acts (LOLF), the conditions governing the application of article 40 to amendments dealing with finance bills have become clearer and more flexible.

Article 47 of the LOLF provides that, for the application of article 40 of the Constitution, "*expenditure is taken, in the context of amendments concerning credits, to mean the expenditure of the mission*". This thus provides

parliamentarians with a new possibility in that they can propose the transfer of credits between the programmes of the same mission without increasing the overall amount of the expenditure of this mission. The basis of the right of amendment, which before was carried out at the level of the budgetary chapter, has thus been broadened. This distinct relaxation only concerns amendments calculated according to the credits.

Credit amendments must have precise motives, i.e. both the increase in the credits for one programme and the decrease in those for one or several other programmes must be justified and must be set out in a precise cost allocation calculation.

In application of the last paragraph of article 47 of the LOLF, all amendments no matter what texts they deal with, must comply with the provisions of the institutional act. This provision has the notable effect of:

– maintaining the particularity of finance acts by preventing any insertion within them of provisions which are outside their scope; such provisions, which are referred to as "*cavaliers budgétaires*" or "budgetary cavaliers" may not appear in finance acts;

– protecting the exclusive area of finance acts: an "ordinary" law may not include any of the provisions which the LOLF reserves exclusively for the area of finance acts.

2. – SOCIAL SECURITY FINANCING BILLS

The Institutional Act of August 2, 2005 concerning social security financing acts provides for a similar financial admissibility system for such bills. It states, in particular, that "*expenditure is taken to mean, in the case of amendments to social security financing bills dealing with expenditure targets, each expenditure target per branch or for the national expenditure target for health insurance*". Parliamentarians may thus introduce amendments increasing the figure for one or several sub-targets in an expenditure target as long as the overall amount of this target is not increased.

In addition, as it prohibits "*cavaliers sociaux*" or "social cavaliers", i.e. all provisions which cannot be attached to the social security financing laws, this institutional law also provides protection for the area of these specific laws and in particular in their exclusive area (e.g. the allocation to another body of revenue that belongs exclusively to the social systems).

File n°39

Monitoring the Constitutionality of Laws

Key Points

The monitoring of the constitutionality of laws (as well as of treaties and international commitments) is carried out by the Constitutional Council.

The Constitutional Council may have such matters referred to it by the President of the Republic, the Prime Minister, the President of the National Assembly, the President of the Senate, or since the constitutional revision of 1974 by 60 M.P.s or 60 Senators. Such referrals concern the monitoring of the constitutionality of a law between the moment of its passing in Parliament and of its promulgation. It is a written, inquisitorial procedure *in camera*.

Institutional laws and the Rules of Procedure of the parliamentary assemblies are referred automatically to the Constitutional Council.

A decision which declares a law unconstitutional blocks its promulgation. If only a part of the bill is declared unconstitutional, the law may be partly promulgated if the articles which are not in conformity are "separable" from the rest of the provisions.

In addition, the Constitutional Council may declare legislative provisions in conformity with the Constitution, subject to certain interpretations.

In July 2008, a new article was inserted into the Constitution. This article, 61-1, provides for the possibility of a referral to the Constitutional Council open to any person involved in legal proceedings, if, during proceedings in progress before a court of law, it is claimed that a statutory provision infringes the rights and freedoms guaranteed by the Constitution. This new right which is known as the "priority, preliminary ruling on the issue of constitutionality" has been applicable since March 1, 2010.

☞ *See also files 6, 27, 30 and 31*

The monitoring of the constitutionality of laws enables the checking of the conformity of such laws to constitutional provisions. The introduction of the monitoring of constitutionality in France in 1958 strengthened the power of the Constitution and led to a jurisprudence with significant consequences.

I. – THE CONSTITUTIONAL COUNCIL

The Constitutional Council is made up of nine appointed members and certain *ex officio* members.

1. – APPOINTED MEMBERS

The President of the Republic, the President of the Senate and the President of the National Assembly each appoint three constitutional councillors (one every three years) for a nine-year term. The length of this term and its non-renewable nature aim at guaranteeing their independence. There are no professional qualifications and there is no age limit to be a member; therefore, every person of French nationality with full political and civil rights is eligible. In practice, the members of the Constitutional Council are often former politicians, high-ranking civil servants or lawyers.

Since the constitutional revision of July 23, 2008, and in accordance with the procedure laid down by the institutional law of July 23, 2010, these appointments are subject to the procedure set out in the last paragraph of article 13 of the Constitution (public consultation of the committee in charge of constitutional laws in each assembly; blocking of the appointment when the sum of the negative votes in each committee represents at least three fifths of the votes cast by the two committees). Nonetheless the appointments made by the presidents of each assembly are only subject to the opinion of the committee in charge of constitutional laws in the assembly concerned.

2. – THE PRESIDENT

The President of the Republic also appoints the President of the Constitutional Council from among its members. Any of the members may be so-appointed but the President of the Republic usually chooses a member whom he has just appointed.

The procedure concerning an interim presidency of the Constitutional Council is not laid down in any law but when the then President, Roland Dumas, put himself "on leave" in 1998, he himself handed over all his powers provisionally to the oldest member of the council, before leaving the council definitively in 2000.

The President of the Constitutional Council carries out the chairmanship of the sittings, appoints the *rapporteur* for each file and has the casting vote in the case of a tie.

3. – *EX OFFICIO* MEMBERS

Former Presidents of the Republic are all life *ex officio* members of the Constitutional Council.

Two former presidents of the IVth Republic, Vincent Auriol and René Coty, sat sporadically until 1962.

Mr. Valéry Giscard d'Estaing has participated in the deliberations of the Constitutional Council since June 2004. He has been joined by Mr. Jacques Chirac who sat for the first time in November 2007, and by Mr. Nicolas Sarkozy following the 2012 presidential election.

4. – THE STATUS OF MEMBERS OF THE CONSTITUTIONAL COUNCIL

The members of the Constitutional Council take an oath before the President of the Republic. Their office entails a duty to preserve secrecy and is incompatible with the exercise of any national, local or European elected position. It is also incompatible with any political activity irreconcilable with the independence required to carry out their duties. Constitutional councillors are also subject to the same professional incompatibilities as M.P.s and may not be appointed to any public post during their term of office. These incompatibilities are also applied to the *ex-officio* members of the Constitutional Council.

The members of the Constitutional Council receive an allowance which is equal to the salaries earned by the two upper echelons of State officials.

They must refrain from all actions which could compromise the independence and the dignity of their office and in particular from taking any public position on matters liable to be the subject of a decision by the council. The deliberations and votes must be kept secret.

In addition, constitutional councillors may not be removed, nor appointed for an extra term by the appointing authorities unless they were previously appointed for a period of less than three years as a replacement for a member whose office was terminated before the normal period. Only the Constitutional Council itself may declare the withdrawal from office of one of its members who has not fulfilled his duties. This procedure has never been used.

II. – THE MONITORING PROCEDURES OF CONSTITUTIONALITY

1. – OBLIGATORY MONITORING (ARTICLE 61, PARAGRAPH 1 OF THE CONSTITUTION)

Institutional acts before their promulgation and the Rules of Procedure of the assemblies (National Assembly, Senate and Congress) before their implementation, are automatically transmitted to the Constitutional Council which makes a decision on their conformity with the Constitution.

2. – THE PRIOR MONITORING OF ORDINARY LAWS (ARTICLE 61, PARAGRAPH 2 OF THE CONSTITUTION)

The Constitutional Council's jurisdiction only applies to ordinary laws passed by Parliament. The Constitutional Council has declared constitutional laws passed by referendum or by Congress to be outside its jurisdiction.

Matters may be referred to the Constitutional Council by the President of the Republic, the Prime Minister, the President of the National Assembly, the

President of the Senate, or, since the constitutional revision of 1974, by 60 M.P.s or 60 Senators. The referral must take place in the period between a bill being passed by Parliament and its promulgation, i.e. during 15 days at the most. Such a referral postpones the promulgation of the bill.

The Constitutional Council has one month to make its declaration although this time limit may be shortened to eight days in urgent circumstances upon the request of the Government.

When the Constitutional Council declares the law in conformity with the Constitution, it may be promulgated.

On the contrary, a decision which declares the whole law to be unconstitutional blocks its promulgation. The legislative procedure which has led to the passing of such a law is annulled and there is no other solution than to begin again from the beginning, unless the reason for the non-conformity constitutes a decisive obstacle which implies, for example, a prior revision of the Constitution itself.

The Constitutional Council may also decide that a law is partly in conformity with the Constitution. In such a case, the law may be promulgated except for the articles or parts of articles which have been declared unconstitutional (and on the condition such articles or parts of articles are "separable" from the rest of the provisions).

3. – THE SUBSEQUENT MONITORING OF ORDINARY LAWS (ARTICLE 61-1, PARAGRAPH 1 OF THE CONSTITUTION)

Until recently the Constitution made no provision for the monitoring of a law once it had been promulgated. Nonetheless, as of a decision of January 25, 1985, the Constitutional Council accepted that the constitutionality of a law which had been promulgated "*may well be contested upon the examination of legislative provisions which modify it, supplement it or affect its field of application*".

The Constitutional Act of July 23, 2008, opened up a new right to people involved in legal proceedings which allowed for referral to the Constitutional Council in the cases of proceedings before administrative and judicial courts, concerning the conformity of statutory promulgated provisions with the rights and freedoms constitutionally guaranteed.

Thus article 61-1 of the Constitution provides that "if, during proceedings in progress before a court of law, it is claimed that a statutory provision infringes the rights and freedoms guaranteed by the Constitution, the matter may be referred by the *Conseil d'État* or by the *Cour de Cassation* to the Constitutional Council, within a determined period".

The second paragraph of this article states that an institutional act shall determine the conditions for the application of said article.

4. – THE MONITORING OF INTERNATIONAL COMMITMENTS (ARTICLE 54 OF THE CONSTITUTION)

This form of monitoring deals with treaties as well as all other international commitments. The procedure which is followed is the same as that for laws and such matters can be referred to the Constitutional Council by the same people (although the referral by 60 M.P.s and 60 Senators was only introduced in 1992) up until the ratification of the treaty. If the treaty is not in conformity with the Constitution then the latter must be revised prior to any ratification.

III. – THE CONTENT AND THE IMPLEMENTATION OF DECISIONS

1. – THE CONTENT OF DECISIONS

In the case of prior monitoring, the procedure is written and inquisitorial. The text of the referral (since 1983) and the observations of the Secretary General of the Government (since 1984) are however published in the *Journal officiel*. The nature of the procedure has tended to evolve towards the inclusion of all parties involved.

The procedure which is to be adopted before the Constitutional Council in cases of priority preliminary rulings on the issue of constitutionality has been established by the Institutional Law of December 10, 2009 and the internal Rules of Procedure of the Council. The parties are allowed to present their observations in the presence of the other parties. The proceedings are public, except in exceptional circumstances. The President of the Republic, the Prime Minister and the presidents of the two assemblies who are informed of any priority, preliminary ruling on the issue of constitutionality which is referred to the Constitutional Council, may address their observations to the latter.

As regards international commitments, institutional laws and the Rules of Procedure of the assemblies, the Constitutional Council must check the conformity to the Constitution of the entire text.

The Constitutional Council may declare some legislative provisions in conformity only if subject to certain interpretations, either by detailing the way in which they must be interpreted (neutralizing interpretation), by adding to them (constructive interpretation) or by making clear the way in which they must be applied (directive interpretation).

2. – THE IMPLEMENTATION OF DECISIONS

A treaty which is declared unconstitutional cannot be ratified without a revision of the Constitution.

A provision of the Rules of Procedure of an assembly which is declared unconstitutional cannot be applied whilst that of a law cannot be promulgated. In the case of a law, the President of the Republic may, nonetheless, promulgate the

law minus the provision(s) or request a new deliberation of Parliament (article 10 of the Constitution).

In the case of subsequent monitoring, the unconstitutional legislative provision is repealed.

The decisions are published in the *Journal officiel* and have the force of res judicata which applies not only to the provision but also to the motives. Such decisions "shall be binding on public authorities and on all administrative authorities and all courts" (article 62 of the Constitution).

File n°40

The Parliamentary Examination of Finance Acts

Key Points

The examination of finance bills by the National Assembly is governed by constitutional rules supplemented by the Institutional Act of August 1, 2001 (LOLF) and is carried out in quite a different way from the examination of other bills. The budget debate which mobilizes a large number of M.P.s, is one of the most important moments in the parliamentary calendar.

☞ *See also files 37, 38 and 50*

I. – THE FINANCE LAW: PARTICULARITY, CONTENT AND PRESENTATION

Article 34 of the Constitution provides that "Finance Acts shall determine the revenue and expenditure of the State in the conditions and with the reservations provided for by an Institutional Act". The particular rules which apply to such acts have been significantly changed by the Institutional Act on Finance Laws dating from August 1, 2001 (LOLF) which replaced the ordinance incorporating the Institutional Act of January 2, 1959.

The finance act is the legal act which makes provision for and authorizes the State's budget. It determines for a budgetary year (i.e. which corresponds to a calendar year) the nature, the amount and the allocation of State resources and expenditure as well as the budgetary and financial balance which results from them (LOLF, article 1).

Only the Government can present finance acts which can only be the result of the adoption of a finance bill (article 47 of the Constitution).

There are three categories of finance acts:

– The finance act of the year,

– The "corrected" finance act,

– The settlement act.

Finance acts must be regular (LOLF, article 32) and their regularity must be considered taking into account all available information and forecasts which can reasonably be expected as a consequence at the moment they are passed.

The finance act of the year is divided into two parts (LOLF, article 34):

– The first part authorizes the raising of taxes, assesses State resources, sets the ceiling on expenditure and lays down the general figures concerning budgetary balance (presented in a balance sheet),

– The second part sets the amount of credits for each of the State budget missions and the employment authorization ceiling for each ministry.

The budget, which up until now was presented by ministry and by type of expenditure (operational, investment etc.) is today a three-tier structure:

– Missions, either ministerial or inter-ministerial,

– Programmes,

– Actions.

Missions, initiated exclusively by Government, include a series of programmes linked to a specific public policy falling into the remit of one or several ministries.

Programmes group together all the credits for the implementation of an action or a coherent group of actions which are within the remit of the same ministry and which include precise targets as well as expected results and which are subject to assessment (LOLF, article 7).

The presentation of credits by category (staff, operation, debt servicing, investment, subsidies, financial operations etc.) is only given as an indication and is subject to the category of staff expenditure (category 2) which is limited according to each programme.

The general state budget (in 2012) had 32 missions bringing together 126 programmes divided into 577 actions.

The finance bill has, by necessity, many annexes which are meant to keep parliamentarians well-informed:

– The blue-coloured budgetary documents or Annual Performance Plans (PAP) which set out within each mission, the credits allocated to each of its programmes and which detail, for each action, the targets and the performance indicators. The Annual Performance Reports (RAP) are annexed to the settlement bill and enable a comparison to be drawn between the forecast and the reality of the expenditure as well as presenting the results obtained regarding targets;

– The yellow-coloured budgetary documents are information annexes (e.g. national statistics on road safety, report concerning state shareholdings, financial relations with the European Union etc.);

– Documents dealing with multi-faceted policies which present in great detail those policies (e.g. internal security, overseas units etc.) which are concerned with programmes whose scope goes beyond a single mission;

– Other budgetary documents which enable, in particular, the budget bill to be placed in its economic, social and financial context (e.g. report on obligatory contributions, economic, social and financial report, report on the Nation's accounts etc.).

II. – A SPECIFIC LEGISLATIVE PROCEDURE

Since 1996, Parliament has taken part in the preparation of the finance bill thanks to a framework debate on public finances, organized in the spring and provided for by the LOLF (article 48). This debate is held on the basis of a Government report on the development of the national economy and on the trends in public finances. The report must include the list of missions and programmes, along with their performance indicators, which are envisaged for the finance bill of the following year.

1. – A BUDGETARY DISCUSSION WITHIN CONSTITUTIONAL TIME LIMITS

Article 47 of the Constitution sets a 70-day time limit for Parliament to reach a decision on the finance bill and applies the accelerated procedure automatically to such bills.

The time limits are thus set out as follows (LOLF, article 40):

– First reading at the National Assembly: 40 days;

– First reading at the Senate: 20 days;

– Parliamentary "shuttle": 10 days;

– If the overall time limit of 70 days after the tabling of the bill is not respected, the Government may have recourse to an ordinance to enforce the provisions;

– The finance bill must be tabled at the National Assembly, which has priority over the Senate, before the first Tuesday in October of the year preceding that to which the budget applies (article 39 of the Constitution). In conjunction with the time limits for tabling, this notion of priority has the effect of prohibiting the Government from introducing before the Senate, in the form of amendments, any new measure (decisions of the Constitutional Council n°76-73 DC of December 28, 1976 and n° 2006-544 DC of December 14, 2006);

– These rules which are restrictive for Parliament but also for Government (which is also required to respect the tabling deadlines for the explanatory annexes) aim at ensuring, thanks to the passing of the budget

before the beginning of the calendar year, that the Nation continues to function.

2. – PROCEDURAL SPECIFICITY STRENGTHENED BY THE CONSTITUTIONAL REVISION OF 2008

The Constitutional Act of July 23, 2008 as well as the provisions of the Rules of Procedure of the National Assembly which result from it, introduced substantial changes into the relationship between Parliament and Government as well as in the ordinary legislative procedure. Many of these do not apply to finance acts:

- In the case of the examination of finance bills in committee, the following aspects remain unchanged: the principle which states that only members of the relevant committee may table amendments in committee and the possibility for consultative committees to meet after the lead committee. In addition, ministers may not attend votes in committee;
- The examination of finance bills may be included with priority status, at any moment, on the agenda of the National Assembly, upon the request of the Government, including during weeks given over, in principle, to a parliamentary agenda (article 48 of the Constitution);
- The discussion on first reading, in plenary sitting, before the National Assembly is on the text presented by the Government and not on the text passed by the committee (article 42 of the Constitution); on other readings, the discussion is on the basis of the bill transmitted by the other assembly and not on that of the committee;
- The so-called Set Time Limit Debate Procedure (the setting of the maximum time for the examination of a bill) is not applicable to the examination of finance bills;
- The possibility for the Government to have recourse to article 49-3 of the Constitution (making the passing of a bill an issue of confidence) has been maintained without any limitation in the case of a vote on the finance bill.

3. – IN-DEPTH EXAMINATION BY THE EIGHT STANDING COMMITTEES

The institutional act (LOLF, article 39) provides for the referral of the finance bill to the Finance Committee and thus excludes the possibility of setting up an *ad-hoc* committee. However, even though the Finance Committee plays a decisive role in the examination of the bill, the seven other committees are also referred to for opinion.

a) The Predominant Role of the Finance Committee

Of the 73 members of the Finance Committee, around 50 take part directly in the examination of the finance bill.

Foremost amongst them is the *General Rapporteur*, who is elected every year at the same time as the Chairman of the Committee and the members of its *bureau* and who has the responsibility of drawing up the general report on the draft budget.

This general report is made of three volumes:

– Volume I is devoted to an overall analysis of the budget placed in its economic and financial context;

– Volume II includes commentaries on the provisions of the first part of the finance bill, i.e. mostly on fiscal measures having an effect on the balance budget concerned;

– Volume III deals with the provisions of the second part of the finance bill, i.e. the examination of articles unrelated to missions. This particularly concerns, for the most significant of such provisions, fiscal or budgetary articles which do not affect the budgetary balance of the year.

The detailed examination of credits is carried out by special *rapporteurs* of the Finance Committee to whom the institutional act (LOLF, article 57) has granted powers of investigation including giving them access to all evidence and the right to communicate information and documents of a financial and administrative nature (subject to such documents and information not being covered by national defence secrets, internal or external state secrets or by legal confidentiality).

These special *rapporteurs* are nominated by the Finance Committee during the first term of the year and are permanently responsible for the monitoring of the handling of the budget in their particular field of competence. Each year, they send questionnaires to the ministers before July 10 in preparation for their reports on the finance bill. The Government is obliged to make a written reply by October 10, at the latest (LOLF, article 49).

Each special *rapporteur* is in charge of the examination of the credits of a mission or in certain cases of one or several programmes within the same mission.

The Finance Committee devotes around fifty hours to the examination of the finance bill for the year.

b) The Opinion of the Other Standing Committees

The seven other standing committees appoint "*rapporteurs* for opinion" who are in charge of the examination of missions (all or part thereof) falling within their field of competence. Every year around sixty budgetary opinions are thus published.

4. – THE SPECIFIC ORGANIZATION OF THE BUDGETARY DEBATE

The Conference of Presidents of the National Assembly sets out a very specific organization for the budgetary debate.

As in the classical procedure, the discussion of the first part opens with a general discussion during which the spokespersons of the political groups take the floor. The discussion of the articles of this first part also follows the normal rules (except the article concerning the revenue contribution to the European Union which is organized in a very specific way).

The particularity of the finance bill is due to a "balancing article" and to the provisions of article 42 of the LOLF which makes the passing of the first part a pre-requisite for the discussion of the second part of the bill. In fact it is this article which assesses the overall budget resources of the State and which places the ceiling on expenditure, thus setting the financial balance. The decision of the Constitutional Council of December 24, 1979, annulled the Finance Act for 1980, because it did not comply with this obligation.

The debate in plenary sitting usually takes up 5 days.

The discussion on the second part does not however follow the usual rules. The Conference of Presidents sets, upon a proposal of the Finance Committee, as of the month of June, an indication of the overall length of the debate and the list of missions which will be examined in extended committee. It then draws up, usually at the beginning of October, the dates for meetings. The missions so concerned are examined during a joint meeting of the Finance Committee and the consultative committee(s). The Government is represented at these meetings and their public nature is similar to that of the plenary sitting. These missions will afterwards only be the subject of a very short debate in plenary sitting followed by an examination of possible amendments and a vote on credits. This practice, which was begun during the XIth Parliament, was actually included in the Rules of Procedure in June 2006. As regards the other missions, the parliamentary groups freely divide the time they give over to each discussion between the following two phases:

- The general discussion phase;
- The questions phase which is followed by immediate replies by the ministers.

At the end of the discussion on the missions which is spread out over three weeks, the National Assembly examines the articles not linked to the second part of the finance bill, the so-called "recapitulation" articles (articles which refer to annexed documents and which relate the distribution of credits by mission), and moves to a vote on the entire finance bill;

In total, the National Assembly devotes around 150 hours every year in plenary sitting and extended committee to the budget debate.

5. – THE PARLIAMENTARY "SHUTTLE" AND THE PROMULGATION OF THE LAW

As the accelerated procedure is automatically applied to the finance bill, it becomes the subject, after its first reading in the Senate within the time limit of twenty days, of a meeting of a joint National Assembly/Senate committee (CMP) which is responsible for examining the provisions remaining under discussion.

The procedure followed in the case of a successful joint National Assembly/Senate committee (i.e. the drawing-up of an agreed bill) or its failure, is the normal one applied to all bills.

Of course when the National Assembly and the Senate must proceed to a new reading, the debate takes place quite quickly as the missions are not re-discussed one after the other.

Before its promulgation, the finance act is usually submitted to the Constitutional Council for its opinion. The Constitutional Council has developed a substantial jurisprudence in budgetary matters and checks in particular the respect of the institutional rules concerning finance acts.

III. – THE EXAMINATION OF THE OTHER FINANCE ACTS: "CORRECTED" FINANCE ACTS AND SETTLEMENT ACTS

1. – "CORRECTED FINANCE ACTS"

"Corrected" finance acts modify the finance act of the year during its year of application and have the same two-part structure.

The main aim of the "corrected" finance act, which is commonly referred to as the "budgetary collective" or "mini-budget", is to take into account the revised assessments of state resources (to include the disparities between the forecasts and the revenue actually received), to apply to credits the necessary modifications which exceed those which the Government is authorized to carry out through regulations and to decide on the new budgetary balance as a result.

Certain such "mini-budgets", particularly in the case of a change of Government, or an unforeseen economic situation, may bring about a significant change in fiscal or budgetary policy.

The discussion of credits does not take place mission by mission and only the Budget Minister is responsible for supporting the bill. The debates are relatively short.

2. – SETTLEMENT ACTS

The main aim of the settlement act is to "settle" the definitive amount of the budget revenues and expenditure to which it refers and to establish the budgetary result which is a consequence.

The time limit for the tabling of the settlement bill is set for June 1 of the year following that to which the budget applied (LOLF, article 46). It is

supported by the Annual Performance Reports (RAP) which enable a comparison between the budget, including its results and the forecasts made in the Annual Performance Plans (PAP) which are annexed to the finance bill of the year.

The settlement bill is examined according to the normal rules, although article 41 of the LOLF provides that the finance bill of the year may not be discussed before an assembly before the passing in first reading of the settlement bill of the previous year. Since 2006 the National Assembly has been in a position to examine the settlement bill as of the month of June or during the extraordinary session in July.

It should be noted that:

– the Constitutional Act of July 23, 2008, provided for a new type of programming acts which, whilst not, strictly speaking, being finance acts, are, given their subject, very close to such laws. These are programming acts which establish "*the multiannual guidelines for public finances*" and "*shall contribute to achieving the objective of balanced accounts for public administrations*" (second last paragraph of article 34 of the Constitution). The ordinary legislative procedure applies to such programming acts.

– The coming into effect of the "European term" in 2011 coincided with the establishment of a debate on the stability and growth programme which is to be transmitted every year in April by the Government to European authorities and on the opinion provided, in June, by the European Council on this programme.

File n°41

The Parliamentary Examination of Laws on the Financing of Social Security

Key Points

The laws on the financing of social security led the Government, every year for almost fifteen years, to present its policy on social security to Parliament. This presentation has allowed Parliament to debate these policies. Thus Parliament makes a decision on the revenue forecast and the expenditure targets for social security, which in fact deals with financial sums greater than those of the state budget. The procedures for the examination of financing bills by the National Assembly are different from those concerning ordinary bills. They are laid down in constitutional provisions which are supplemented by an institutional act.

☞ *See also files 30, 37, 38, 48 and 50*

I. – THE LAWS ON THE FINANCING OF SOCIAL SECURITY: PARTICULARITY, CONTENT AND PRESENTATION

1. – THE DEFINITION OF LAWS ON THE FINANCING OF SOCIAL SECURITY

Article 34 of the Constitution, as modified by the Constitutional Act of February 22, 1996, provides that laws on the financing of social security "shall lay down the general conditions for the financial balance thereof, and taking into account forecasted revenue, shall determine expenditure targets in the conditions and with the reservations provided for by an Institutional Act".

There are two categories of financing laws: the financing law of the year and the "corrected" financing laws. The first "corrected" financing bill was only tabled in 2011.

The specific rules which apply to them are laid down by the Institutional Act, n°96-646 of July 22, 1996, modified by the Institutional Acts, n°2005-881 of August 2, 2005 and n°2010-1380 of November 13, 2010. These institutional provisions are principally codified in articles L.O. 111-3 to L.O. 111-10-2 of the Social Security Code.

The law on the financing of social security is a particular category of law: it sets the operating balances for the basic, obligatory, social security schemes and for the bodies which contribute to their financing. Furthermore, it can authorize

certain of these bodies to take out loans and can include a certain number of other measures of a financial nature or which improve the monitoring of Parliament over the finances of social security.

The scope of the laws on the financing of social security covers all the basic, obligatory, social security schemes (and thus excludes complementary schemes and unemployment insurance) as well as the bodies contributing to their financing i.e. the Old Age Solidarity Fund. It also includes the Reserve Retirement Fund and the Social Welfare Debt Redemption Fund, as well as the National Solidarity Fund for Autonomy.

In accordance with the Institutional Act of August 2, 2005, the laws on the financing of social security have exclusive jurisdiction in the case of the total or partial allocation to any other legal entity of the exclusive revenue of the basic schemes or of the bodies which contribute to their financing. Similarly, only a law on the financing of social security can authorize the non-compensation by the State of reduction measures in social contributions which it has decided.

2. – THE CONTENT OF THE LAWS ON THE FINANCING OF SOCIAL SECURITY

The Institutional Act of August 2, 2005, introduced balance sheets which are one of the specificities of the laws on the financing of social security. For each financial year examined, these balance sheets display the financial situation of each branch of the social security system, of the general scheme, of all the basic, obligatory schemes and of all the bodies contributing to their financing.

The law on the financing of social security for the year Y has four parts.

The first part concerns the last full financial year (Y-2) and is the equivalent of a ‘settlement’ act.

The second part deals with provisions concerning the current year (Y-1). This enables the Government to propose to Parliament to pass corrections for the current year. This part is divided into two sub-sections. The first relates to revenue and the general balance and the second to expenditure.

The third part sets down the forecast revenue and the general balance for the basic, obligatory, social security schemes and for the bodies which contribute to their financing for the year Y. In addition to the balance sheets concerning the year Y (revenue, expenditure and balance), it also sets the ceiling on the cash advances which the schemes may request.

The fourth part sets the expenditure targets for the different branches of the social security system (health, work accidents, work-related illnesses, old age and family) which may be divided into sub-targets. This part includes the National Expenditure Target for Health Insurance (ONDAM) and its sub-targets.

Article L.O. 111-3 of the Social Security Code provides that the accounts of the social security schemes and bodies must be true and fair and faithfully represent their assets and their financial situation.

3. – DOCUMENTS ANNEXED TO THE BILLS ON THE FINANCING OF SOCIAL SECURITY

The bill on the financing of social security has around ten documents annexed. Amongst them three are particularly interesting: one points out the financial impact of new measures proposed; another analyzes the situation concerning the reductions in resources for schemes decided by the State and the amount of the corresponding compensation which the State pays into the social security system; a third is part of a more qualitative assessment approach and presents social security policy "programmes of quality and efficiency" (PQE) in each of the branches.

The law on the financing of social security includes, in addition, the approval of two annexed reports. The first deals with the assets of the social security and describes the measures anticipated for the allocation of surpluses or for the covering of deficits which may be noticed at the time of the passing of the part concerning the last full financial year. The second sets out the forecast development of the social finances of the social security system over the following four years.

Furthermore, provisions concerning the optional area of social security financing laws are subject, like those of all Government bills, to an impact study which is tabled, at the same time as the bill, by the Government before the first assembly to which the bill is referred. In the case of social security financing bills, the components which should be included in the impact studies are transmitted in the form of a document annexed to the bills. In addition, the usual monitoring by the Conference of Presidents of the respect of the rules concerning impact studies is not applied to social security financing bills.

II. – A SPECIFIC PARLIAMENTARY PROCEDURE

Since the Institutional Act of August 2, 2005, Parliament has taken part in the preparation of the bill on the financing of social security through a debate in the spring on the direction to be taken by the finances of the social security system. This debate takes place at the same time as that on the State budget and is held on the basis of a Government report.

As with the finance acts, the Government has a monopoly on the presentation of the laws on the financing of social security which can thus only be the result of the passing of a Government bill. This is in accordance with article 47-1 of the Constitution which sets down the main references for the procedure to be applied in the examination by Parliament of the bills on the financing of social security.

1. – A DISCUSSION WITHIN CONSTITUTIONAL TIME LIMITS

Article 39 of the Constitution states that bills on the financing of social security, just like finance bills, must be firstly submitted to the National Assembly. The bill on the financing of social security for the year must be tabled,

at the latest by October 15, or if this day is a holiday, then the first working day after.

Just like article 47 in the case of finance bills, article 47-1 of the Constitution sets strict time limits for the examination of bills on the financing of social security: if the National Assembly has not reached a decision on first reading within twenty days following the tabling of the bill, the Government refers the bill to the Senate. The latter must rule within fifteen days. If Parliament fails to reach a decision within fifty days in all, the provisions of the bill may be implemented by ordinance.

The institutional Law of August 2, 2005 makes the accelerated procedure automatically applicable to the examination of bills on the financing of social security. The last paragraph of article 42, in addition, provides that the six-week time period which should pass between the tabling of a bill and its discussion in plenary sitting, is not applicable to social security financing bills.

Just as for finance acts, the compensation for these restrictive time limits is a specific protection for the field of the law on the financing of social security. Thus provisions having no connection with the financing of social security are considered as "social Trojan horses" and are thus removed by the Constitutional Council (if they have not already been declared inadmissible by the Chairman of the Finance Committee in the case of amendments coming from Parliament).

2. – EXAMINATION IN COMMITTEE

Contrary to the finance bills which, in accordance with an institutional provision, are referred to the committees dealing with financial matters, there is no automatic referral for a bill on the financing of social security to the parliamentary committees dealing with social matters. However, at the National Assembly, the Committee for Social Affairs traditionally takes the role of the lead committee for the bills on the financing of social security. The Finance, General Economy and Budgetary Monitoring Committee refers the bill to itself for consultation.

Each year, the Committee for Social Affairs appoints its *rapporteurs*. Since the financing bill of 2010, there have been five of them and they are in charge, respectively, of revenue and general balance, health insurance, work accidents and work-related illnesses, the medico-social branch, the old age branch and the family branch. These *rapporteurs* follow and monitor the implementation of the laws on the financing of social security and carry out an evaluation of all questions relating to the financing of the social security system. To do this, they may carry out checks which grant them complete access to all evidence. Before July 10, every year, they send questionnaires to the Government so as to prepare the examination of the bill on the financing of social security. The Committee for Social Affairs may follow all year long the implementation of the laws on the financing of social security thanks to the work of the Assessment and Monitoring

Mission for the Laws on the Financing of Social Security (MECSS), which is made up of some of its members.

The work relating to the bill on the financing of social security begins around mid-September, with the hearing, by the Committee for Social Affairs, of the First President of the Court of Accounts and with his presentation of the Court's annual report on social security.

After hearings with ministers which follow the adoption of the bill by the Council of Ministers, the Committee for Social Affairs examines the bill on the financing of social security in the same way as other bills. The general discussion is followed by the examination of the articles along with the amendments tabled in committee. The latter finishes its work with a vote on the whole bill.

The examination of the bill on the financing of social security usually requires three or four meetings taking into account the number of articles and amendments to examine (respectively 68 and 498 for the 2012 law on the financing of social security).

The five *rapporteurs* each write one section of the report on the bill. An additional section contains a comparative table (initial provisions, the bill and amendments adopted) as well as the list of the amendments examined by the committee.

3. – THE DISCUSSION IN PLENARY SITTING

The procedures for the discussion of the bill on the financing of social security are decided by the Conference of Presidents. On the agenda of the National Assembly, it is traditional that the discussion of the bill on the financing of social security should take place in the last week of October, following the passing of the first part of the finance law. The so-called "Set Time Limit Debate Procedure" cannot be applied to the social security financing bill.

The discussion in plenary sitting usually takes up between four and five days of sitting. Although it follows the usual rules as regards the discussion of bills, the bill is dealt with in a specific way when it comes to the order of the votes on its different parts. In fact, article L.O. 111-7-1 of the Social Security Code sets out an order of voting which makes provision, in particular, that the fourth part of the bill for the year which includes the provisions concerning the expenditure for the coming year, cannot be discussed before the passing of the third part which includes the provisions relating to revenue and the general balance for the same year. Besides, the National Expenditure Target for Health Insurance, although divided into at least five sub-targets, is subject to a forced vote.

In addition, in application with the second paragraph of article 42 of the Constitution, one of the innovations introduced by the constitutional revision of July 23, 2008, i.e. the fact that discussion in plenary sitting should be held on the

basis of the bill as amended in committee, does not apply to social security financing bills.

It should also be stated that the possibility for the Government to have recourse to article 49-3 of the Constitution (the making of the passing of a bill an issue of confidence) is maintained without limitation in the case of the vote on the social security financing bill.

4. – THE PARLIAMENTARY "SHUTTLE" AND THE PROMULGATION OF THE LAW

As the accelerated procedure is applied automatically to the bill on the financing of social security, it becomes the subject, after its reading in the Senate within the time limit of twenty days, of a meeting of a joint National Assembly/Senate committee which is responsible for examining the provisions which remain under discussion. The procedure followed in the case of a successful joint National Assembly/Senate committee (i.e. the drawing-up of an agreed bill) or its failure, is the normal one applied to all bills.

Before its promulgation, the law on the financing of social security is usually submitted to the Constitutional Council for its opinion, if a referral, as has always been the case until now, has been made. The Constitutional Council has developed a substantial jurisprudence and is particularly vigilant concerning the respect of the limits of the laws on the financing of social security and the priority of the National Assembly concerning the examination of the new measures proposed by the Government in the framework of financial laws.

File n°42

The Ratification of Treaties

Key Points

Article 53 of the Constitution makes provision for parliamentary intervention, in certain conditions, to authorize the ratification of international conventions. The Foreign Affairs Committee plays an essential role in this procedure. It may, in particular, decide upon the adjournment of the discussion or propose to the National Assembly to amend the authorization bill. The parliamentary assemblies may not however amend the actual text of international conventions nor may they express reservations concerning them.

In plenary sitting, a procedure referred to as "simplified examination" is often used.

Parliament has been able, in certain cases, to influence the negotiator.

☞ *See also files 32, 43, 56 and 58*

In accordance with article 52 of the Constitution, the President of the Republic negotiates and ratifies treaties. In addition, he is kept informed by the Government of all negotiations leading to the conclusion of an international agreement, even if such an agreement is not subject to ratification.

Article 53 of the Constitution provides that several categories of treaties and agreements may only be ratified or approved by virtue of a law. This provision deals with:

- Peace treaties,
- Commercial treaties,
- Treaties or agreements relating to international organizations,
- Treaties that commit the finances of the State,
- Treaties that modify provisions which are matters for statute,
- Treaties relating to the status of persons,
- Treaties that involve the ceding, exchange or addition of territory.

Contrary to the American Senate, which only authorizes the ratification of treaties and not of executive agreements, no difference is made in France between treaties and agreements as the abiding practice, supported by

jurisprudence, considers that the only criterion according to which an international commitment should or should not be submitted to Parliament is practical and not formal.

Thus the provisions laid down in article 53 of the 1958 Constitution, which substantially repeat those stated in the 1946 Constitution, mean that a substantial number of treaties and agreements concluded by France are submitted to Parliament before they come into effect. The *Conseil d'Etat* makes sure in particular that every agreement bearing a financial burden is the subject of a bill authorizing its ratification.

Furthermore, in article 11, the Constitution provides that the President of the Republic may submit to referendum, thus without the intervention of Parliament, "any Government bill…which provides for authorization to ratify a treaty that, although not contrary to the Constitution, would affect the functioning of the institutions".

In addition, agreements concluded by the European Union are submitted to Parliament when they deal with a field of competence shared by the Union and its member states.

I. – THE ROLE OF THE FOREIGN AFFAIRS COMMITTEE

As the conduct of diplomatic negotiations is a prerogative of the executive, almost all legislative bills authorizing the ratification or the approval of international commitments are initiated by Government. When a bill authorizing the ratification of a treaty or the approval of an agreement is tabled before the National Assembly, it is systematically referred to the Foreign Affairs Committee (the rule is different in the Senate as fiscal conventions, for example, are referred to the Finance Committee). The Foreign Affairs Committee examines around fifty such commitments every year.

1. – EXAMINATION IN COMMITTEE

The Foreign Affairs Committee appoints from amongst its members, a *rapporteur* who is responsible for presenting a bill to his colleagues. The work of the committee leads to a written report which is distributed before the plenary sitting. Since a modification of article 128 of the Rules of Procedure of the National Assembly in 2003, validated by the Constitutional Council, M.P.s have the right to table amendments to the bill authorizing the ratification or approval of an convention. This right is limited to the main body of the bill and cannot be applied to the convention itself. This enables, where necessary, the field of the parliamentary authorization to be broadened to several international conventions and also means that the mention of a convention can be removed when the bill authorizes the simultaneous ratification of several conventions.

Quite often such bills are unanimously passed by the committee but, in certain cases, the committee postpones its decision, rejects the bill or obtains its

adjournment. It is not unusual either that the committee postpones its decision or passes the bill whilst requesting the Government to have it examined in plenary sitting so that it may obtain further information.

An illustration of this would be the approval of the convention on social security with Morocco, which was the subject of two meetings of the committee so that it could be very clear on the financial consequences of this bill and on a provision pertaining to the status of the wives of polygamists.

It also took evidence from the Secretary General of the Ministry of Foreign Affairs on Franco-Monegasque relations before deciding to pass the bill authorizing the ratification of the treaty which adapted the friendship treaty between France and Monaco. In addition, upon a proposal of its Chairman, it requested Government representatives to provide legal precisions on the bill authorizing the ratification of the International Convention against Doping in Sport. It then passed this bill during a second meeting, having obtained the desired clarifications.

2. – THE ADJOURNMENT PROCEDURE

The adjournment of a bill is a procedure which is specific to the examination of international treaties and agreements (article 128 of the Rules of Procedure). This procedure enables the postponement of the discussion of an international agreement without actually formally rejecting it. It is adapted to situations when M.P.s consider that their authorization is subordinate to conditions outside the subject of the agreement. In one case, dealing with a partnership agreement with a country, the adoption of an adjournment motion by the committee was motivated by the human rights situation in that country and led to the withdrawal of the bill from the agenda. This procedure was also applied during the examination of a bill authorizing the ratification of six International Labour Organization conventions concerning seafarers in 2003.

An adjournment motion was also adopted during the examination of a bill authorizing the ratification of a decision concerning the statutes of the European System of Central Banks and of the European Central Bank (ECB). Before passing this bill, the committee decided to hear evidence from the Minister of Foreign Affairs, given the importance of the powers granted to the ECB.

However it is not essential to use this procedure to arrive at the same result. The committee can also, even though it may have decided to pass a bill submitted to it for examination, inform the Government of its reservations concerning the timing of its inclusion on the agenda for the plenary sitting.

Thus, during the XIIth term of Parliament, after having passed the bill authorizing the Government to ratify a fiscal convention between France and Libya, the committee did not wish the Government to include the bill on the agenda as long as the freeing of Bulgarian nurses and a Palestinian doctor had not been obtained.

During the XIIIth term of Parliament, this was also the case for the partnership and cooperation agreement setting up a partnership between the European Communities and Turkmenistan. The committee examined the bill on April 7, 2010 and adopted it but requested the Government not to include it on the agenda as long as two Turkmen journalists arbitrarily imprisoned were not freed. In the end, the text was not put to a vote by the Assembly.

3. – THE INFLUENCE OF THE WORK OF THE FOREIGN AFFAIRS COMMITTEE ON THE NEGOTIATOR

Even when the committee passes a bill, considering that the convention is generally balanced, it may happen that it informs the Government that such and such a stipulation (in the fiscal, social or financial field for example) does not appear to be timely.

The cases of rejection are much rarer. They occur when certain provisions of the convention are considered unacceptable. In practice, there does not seem to have been any cases of outright rejection but rather cases of postponement for very long periods. Thus, in 1979 and 1981, the committee postponed the examination of an extradition treaty with Canada. This finally led the Minister of Foreign Affairs to re-negotiate a new treaty which was then passed.

4. – THE QUESTION OF RESERVATIONS

The practical criterion of the competence of Parliament could lead it to make decisions on the contents of reservations, insofar as such reservations could substantially modify the sphere of France's international commitment.

A different practice has nonetheless been established. The reservations which the Government considers presenting on an agreement are not included in the bill authorizing its ratification but are passed on to the committee which, very often, publishes them in its report so that Parliament can be informed of them. This flexible procedure which enables M.P.s to deliberate with full knowledge of the facts and to discuss, if necessary, the relevance of the reservations, has the advantage of not obliging the bill to return before Parliament in the case of a change in the content of the reservations or of their possible future withdrawal.

In accordance with the Institutional Act of April 15, 2009, the documents which accompany the bills and which clarify the aims of the agreements and treaties as well as assess their economic and financial consequences or their legal repercussions, mention, where necessary, the reservations or interpretative declarations made by France.

II. – EXAMINATION IN PLENARY SITTING

The Rules of Procedure of the National Assembly provide for the possibility of the use of a simplified examination procedure, specifically for bills authorizing the ratification or the approval of an international convention. In

certain cases, the authorization of the ratification or the approval of a convention may only occur after the revision of the Constitution.

1. – THE SIMPLIFIED EXAMINATION PROCEDURE

In accordance with article 103 of the Rules of Procedure, the Conference of Presidents may decide that a bill be put directly to a vote without any speaker having spoken. This procedure enables the legislative load of the plenary sitting to be lightened and leads to better management of the time for legislation to be passed. It is quite regularly used for the examination of international conventions.

These provisions do not at all limit the competence of the National Assembly as, on the one hand, the examination has taken place in committee and, on the other hand, the Government, the Chairman of the Foreign Affairs Committee or the chairman of a political group may oppose the simplified examination procedure. In practice it is the Foreign Affairs Committee which decides, after having informed the Government, if there be a debate in plenary sitting or not.

During the XIIIth term of Parliament, 194 agreements were the subject of the simplified examination procedure in plenary sitting upon the request of the committee and 57 were the subject of debate in plenary sitting. These debates were held either because the committee considered that the importance of the agreements justified them or because the chairman of a group opposed the procedure. During this period, the chairmen of groups opposed the implementation of the simplified procedure nine times.

2. – CASES WHERE CONSTITUTIONAL REVISION IS A PREREQUISITE

The constitutional Law of June 25, 1992 provided that, like the President of the Republic, the Prime Minister and the Presidents of the two assemblies, parliamentarians (at least 60 M.P.s or 60 senators) could ask the Constitutional Council to decide on the conformity of an international convention with the Constitution. If the convention is declared not to be in conformity with the Constitution, the authorization to ratify or approve it may not be passed before a constitutional revision (article 54 of the Constitution).

3. – THE CONSEQUENCES OF THE AUTHORIZATION OF PARLIAMENT

Once authorized by Parliament, the ratification or the approval does not necessarily come immediately into force. This may be the case when all the States of the European Union decide to ratify a treaty the same day. It could also happen that France may wait until it has brought its internal law into conformity with the stipulations of the convention. This was the case, for example, for the coming into effect of the OECD convention against corruption. Moreover, as regards diplomatic matters, the vote of the two assemblies does not bind the executive: the decision to ratify or approve a convention can be adjourned in a discretionary manner even after the promulgation of an authorization law.

The time limit for the examination of authorization bills creates a real problem on account of the overloaded agenda of the National Assembly. France is a country where the ratification procedure is particularly long and this explains the interest of the application of simplified examination procedures.

File n°43

The Revision of the Constitution

Key Points

A revision of the Constitution may be initiated either by the President of the Republic or by the Government.

In this particular field, the two parliamentary assemblies have the same powers. This means that constitutional bill must be passed in identical terms by both the National Assembly and the Senate.

The law is definitively passed either by referendum (a procedure used only once: the 2000 constitutional revision which reduced the term of office of the President of the Republic to five years) or by a three-fifths majority of the votes cast by the two assemblies meeting together in Congress at Versailles.

☞ *See also files 2, 5 and 30*

Article 89 of the Constitution of October 4, 1958 sets down the rules for the revision of the Constitution. Since coming into force, this procedure has been successfully used twenty-two times.

During the first years of the Fifth Republic, article 11 of the Constitution, which provides for the possibility of having recourse to a referendum in certain limited cases which are listed, was also used to revise the Constitution (28 October, 1962) so as to introduce the election by direct universal suffrage of the President of the Republic. Nonetheless, this contested practice has not been used since the failure of the referendum of April 27, 1969 concerning regionalization and the abolition of the Senate.

The procedure laid down by article 89 has the specific nature of requiring consensus within the executive and the agreement of the two assemblies The opposition of the President of the Republic, of the Prime Minister or of one or other of the two assemblies would be enough to prevent the entire revision process from succeeding.

I. – THE REVISION PROCEDURE

1. – THE INITIATIVE FOR REVISION

a) The Power to Initiate

The power to initiate a constitutional revision is held by the President of the Republic, upon a proposal of the Prime Minister, or by parliamentarians. In the first case, the bill is referred to as an executive constitutional bill and in the second as a parliamentary constitutional bill. In fact, all twenty-two constitutional revisions carried out in accordance with the procedure of article 89 since 1958 have been based on executive constitutional bills.

b) Limitation of the Power to Initiate

Article 89 states clearly that the republican form of government shall not be the subject of a revision.

It also states that no revision shall be commenced or continued where the integrity of the territory is jeopardized.

In addition, article 7 rules out the possibility of using the revision procedure provided for by article 89 in the case of the vacancy of the Presidency of the Republic. The right to initiate constitutional revision is thus one of the powers that an interim President of the Republic may not carry out.

2. – EXAMINATION OF THE EXECUTIVE OR PARLIAMENTARY CONSTITUTIONAL BILLS

Examination of the executive or parliamentary constitutional bills takes place before each assembly according to the ordinary law legislative procedure. However, one of the new rules introduced by the constitutional revision of July 23, 2008, does not apply. The discussion of an executive constitutional bill is carried out on the basis of the original bill, or in the case of the "shuttle", on the bill transmitted by the other assembly and not on the bill adopted by the committee.

However, the time constraints introduced by the same revision do apply. This means that there must be a six-week period between the tabling of the executive or parliamentary bill and its discussion in plenary sitting and the Government may not reduce this period by the implementation of the accelerated procedure. Similarly, the four-week period stipulated between the transmission of the bill by the first assembly to which it is referred and the discussion in the second assembly, is also applied (in July 2008, the Senate examined the executive constitutional revision bill fourteen days after its transmission by the National Assembly).

In addition, two other specificities concerning the discussion of executive or parliamentary constitutional bills should be noted:

– Executive constitutional bills are not accompanied by an impact study. This is an exemption from the rule set down by the Institutional Act of April 15, 2009;

– The Set Time Limit Debate Procedure introduced on the basis of article 44 of the Constitution by the reform of the Rules of Procedure of May 2009, cannot be used in such a case.

If an ad-hoc committee is not set up (such a committee has never indeed been set up either at the National Assembly or at the Senate) the executive or parliamentary constitutional bills are referred to the Constitutional Law, Legislation and General Administration Committee, although other committees may give their opinion on the matter. Indeed, at the National Assembly, the Foreign Affairs Committee and the Finance Committee gave their opinion on a bill which led to the revision of June 25, 1992 and added a title to the Constitution called "On the European Communities and the European Union". It is also thus that the Committee for Cultural, Family and Social Affairs as well as the Finance Committee gave their opinion on a bill which became the Constitutional Act of February 22, 1996 and introduced the law on the financing of social security.

The "shuttle" continues until the bill is passed in identical terms by the two assemblies which, in constitutional matters, have the same powers. Contrary to the normal legislative procedure, the Government cannot ask the National Assembly to take a definitive decision.

3. – THE DEFINITIVE PASSING OF THE LAW

The definitive passing of the executive or parliamentary constitutional bill is subordinate to its approval by referendum. Nonetheless, in the case of executive constitutional bills, the President of the Republic may rule out a referendum and submit such bills to the approval of the two assemblies gathered together in Congress.

Congress, whose *Bureau* is that of the National Assembly, is convened by a countersigned decree of the President of the Republic to meet in Versailles. As its sole aim is to approve the bill passed by the two assemblies, on behalf of the sovereign people, it may not of course amend it. Debates are thus limited to an explanation of vote put forward by each political group at the National Assembly and the Senate. After that the vote is taken. It is taken either by each voter being called to the rostrum or, since the modification in the Rules of Procedure of June 28, 1999, according to other procedures set down by the *Bureau* of the Congress. Thus, since that date (when Congress was called to vote twice on two constitutional bills on the same day for the first time), votes have been organized in eight polling stations set up in the immediate vicinity of the Chamber. For the constitutional bill to be approved, it must receive a three-fifths majority of the votes cast.

II. – CONSTITUTIONAL REVISIONS SINCE 1958

Since 1958 there have been a total of 24 constitutional revisions of varying degrees of importance. With the exception of the first two, the revisions have been carried out in accordance with article 89 of the Constitution. 21 have been approved by Congress and only one, in 2000, by referendum. This concerned the reduction of the presidential term of office to five years.

– June 1960, according to a dispensatory revision procedure dealing with provisions concerning the "Community", i.e. the geo-political unit linking France to its former African colonies (this procedure was repealed by the Constitutional Act of August 4, 1995):

  • Constitutional Act n° 60-525 of June 4, 1960 aiming at completing the provisions of Title XXI of the Constitution (independence of African and Malagasy member states of the Community).

– October 1962, by referendum in accordance with article 11 of the Constitution:

  • Law n° 62-1292 of November 6, 1962, concerning the election of the President of the Republic by universal suffrage.

– December 1963, by the Congress:

  • Constitutional Act n° 63-1327 of December 30, 1963, modifying the provisions of article 28 of the Constitution (modification of the dates or parliamentary sessions).

– October 1974, by the Congress:

  • Constitutional Act n° 74-904 of October 29, 1974, revising article 61 of the Constitution (extension of the right of referral to the Constitutional Council for 60 M.P.s and 60 Senators).

– June 1976, by the Congress:

  • Constitutional Act n° 76-527 of June 18, 1976, modifying article 7 of the Constitution (modification of the electoral campaign rules for presidential elections – in the case of the death or incapacity of a candidate).

– June 1992, by the Congress:

  • Constitutional Act n° 92-554 of June, 1992, adding to the Constitution the title: "On the European Communities and the European Union" (for the ratification of the Maastricht Treaty).

– July 1993, by the Congress:

  • Constitutional Act n° 93-952 of July 27, 1993, revising the Constitution of October 4, 1958 and modifying Titles VIII, IX, X and

XVI (setting up the Court of Justice of the Republic in charge of judging the criminal liability of members of the Government).

– November 1993, by the Congress:

  - Constitutional Act n° 93-1256 of November 25, 1993, dealing with international agreements concerning the right to asylum.

– July 1995, by the Congress:

  - Constitutional Act n° 95-880 of August 4, 1995, extending the field of application of referenda, introducing a single ordinary parliamentary session, modifying the parliamentary system of immunity and repealing provisions concerning the Community and transitory provisions.

– February 1996, by the Congress:

  - Constitutional Act n° 96-138 of February 22, 1996, introducing laws on the financing of social security.

– July 1998, by the Congress:

  - Constitutional Act n° 98-610 of July 20, 1998, concerning New Caledonia.

– January 1999, by the Congress:

  - Constitutional Act n° 99-49 of January 25, 1999, modifying articles 88-2 and 88-4 of the Constitution (modification of provisions concerning the European Union).

– July 1999, by the Congress:

  - Constitutional Act n° 99-568 of July 8, 1999, inserting at Title VI of the Constitution, article 53-2 recognizing the International Criminal Court.

  - Constitutional Act n° 99-569 of July 8, 1999, concerning equality between men and women.

– September - October 2000, by referendum:

  - Constitutional Act n° 2000-964 of October 2, 2000, concerning the length of the term of office of the President of the Republic.

– March 2003, by the Congress:

  - Constitutional Act n° 2003-267 of March 25, 2003, concerning the European Arrest Warrant.

  - Constitutional Act n° 2003-276 of March 28, 2003, concerning the decentralized organization of the Republic.

– March 2005, by the Congress:
  - Constitutional Act n° 2005-204 of March 1, 2005, modifying Titre XV of the Constitution.
  - Constitutional Act n° 2005-205 of March 1, 2005, concerning the environment charter.
– February 2007, by the Congress:
  - Constitutional Act n° 2007-237 of February 23, 2007, modifying article 77 of the Constitution.
  - Constitutional Act n° 2007-238 of February 23, 2007, modifying Titre IX of the Constitution.
  - Constitutional Act n° 2007-239 of February 23, 2007, concerning the prohibition of the death penalty.
– February 2008, by the Congress:
  - Constitutional Act n° 2008-103 of February 4, 2008, modifying title XV of the Constitution.
– July 2008, by the Congress:
  - Constitutional Act n° 2008-724 of July 23, 2008, on the modernization of the institutions of the Fifth Republic.

File n°44

Votes at the National Assembly

Key Points

As a consequence of the prohibition of voting by binding instructions, votes are personal and the possibilities of voting by proxy are limited.

With the exception of votes on personal appointments (the election of the President at the beginning of a term of Parliament, for example), votes are public and may be by show of hands, by ordinary public ballot or by ordinary public ballot at the rostrum or in the rooms adjoining the Chamber.

The most important votes are often postponed by the Conference of Presidents until Tuesday afternoons, after Government question time, so as to have the largest number of M.P.s present to vote.

☛ *See also file 36*

I. – THE PERSONAL NATURE OF THE VOTE

Article 27 of the Constitution declares the personal nature of the vote of parliamentarians and prohibits all voting by binding instructions; it limits the delegation of voting by disallowing each parliamentarian from receiving more than one proxy vote. The Ordinance of 7 November 1958 completes this provision by listing the cases in which parliamentarians are permitted to delegate their right to vote.

For a long time, these provisions were skirted around by the technique of the electronic vote: each M.P. had a personal key which he however would leave on his desk. Since 1993, the limitation to a single proxy vote per M.P. has been strictly applied. At the same time, the Rules of Procedure of the National Assembly allow the Conference of Presidents to decide on a public ballot and to set its timing so as to allow the greatest number of M.P.s possible to be present. Since then, many ballots, especially the overall votes on major bills, are usually held on Tuesday afternoons after Government question time.

II. – THE PUBLIC NATURE OF THE VOTE

With the exception of votes on personal appointments (the election of the President at the beginning of a term of Parliament, for example), all votes in the Parliament are public. They may be by show of hands, by ordinary public ballot, by public ballot at the tribune or in the rooms adjoining the Chamber. M.P.s have the choice between three voting positions: “for”, “against”, “abstention”.

1. – VOTE BY SHOW OF HANDS

This is the normal voting procedure. The President verifies the result of the vote and announces it. In case of doubt on the result, the Assembly shall vote by standing and sitting. If there is still doubt, the President may decide to proceed to an ordinary public ballot.

When voting by show of hands, the M.P.s present publicly show their position. However this position is not recorded nor is it published in the *Journal officiel*.

2. – VOTE BY ORDINARY PUBLIC BALLOT

Such a vote is taken by right:

– Upon a decision of the chairman of the sitting or upon a request by the Government or by the lead committee;

– Upon a request *by the chairman of a group or of his delegate, provided the chairman of the group has notified the President of the National Assembly, in advance, of the delegate's name*;

– Upon a decision of the Conference of Presidents. The latter usually only uses this prerogative in the case of a vote on the whole body of the most important texts. The Conference of Presidents will use such a prerogative to postpone the vote to a day and a time when as many M.P.s as possible may participate. This type of vote is generally referred to as a “formal vote”.

Voting by ordinary public ballot takes place electronically. Each M.P. votes using his console and his vote is directly recorded by computer. An M.P. may hold one, and only one, proxy vote on behalf of one of his absent colleagues. Proxy votes are processed by the electronic voting machine. The vote of the “delegate” (i.e. the M.P. who is present) on his voting console leads automatically to the counting of the vote of his delegator (i.e. the M.P. who is absent) as a vote in the same way. At the end of the ballot, the chairman of the sitting announces the result and calls for it to be displayed on three electronic screens within the chamber. Minutes later, a political analysis of the ballot, giving the results of the vote, is posted at the entrance to the Chamber. This analysis is published in the *Journal officiel* in annex to the report of the sitting, and also appears on the internet site of the National Assembly.

For the so-called “formal” public votes organized by the Conference of Presidents, the analysis consists of a complete nominative list of the voters and details each voting position for each political group as well as for the M.P.s who do not belong to any group.

3. – VOTE BY PUBLIC BALLOT AT THE ROSTRUM OR IN THE ROOMS ADJOINING THE CHAMBER

Such a vote is taken by right:

– When the Constitution requires a qualified majority (the adoption upon final reading of institutional laws, motion authorizing the passing of a bill to ratify a treaty on the membership of a state of the European Union); the majorities required are different in these cases, (the absolute majority of M.P.s making up the National Assembly in the first case and a three-fifths majority in the second). These majorities are calculated according to the numbers of seats actually filled (vacant seats are not counted);

– When an issue of confidence in the Government has been raised: in application of article 49, paragraph 1, of the Constitution i.e. if the Government makes its programme or a statement of general policy an issue of confidence ,the majority of votes cast is required; in application of article 49, paragraph 2 of the Constitution, for a vote on a motion of no confidence, it is, on the contrary, the absolute majority of M.P.s making up the National Assembly which is required and only votes for the motion are counted;

– When the Government decides to put to the vote of the National Assembly, a statement it has made on a given subject in accordance with article 50-1 of the Constitution.

This vote usually takes place using an electronic ballot box which is placed on the speakers’ rostrum. The ushers carry out a roll call and the M.P.s cast their vote at the rostrum when their name is called. They place a blue voting paper (For), a red one (Against) or a white one (Abstention) in the ballot box. They may also place a ballot paper for their delegator.

However, the slowness of such operations led the National Assembly to modify its Rules of Procedure in 2003. Now, the Conference of Presidents may decide that the ballot will take place “*in the rooms adjoining the Chamber*” where several such ballot boxes are set up. The ballot is generally open for one hour and this period is limited to 30 minutes for no-confidence motions. Each ballot paper has a bar code which enables the machine to identify the M.P. and the way he has voted. At the end of the ballot, the results are immediately declared and a political analysis of the position of each M.P. is made available in the minutes following. In this case too, the analysis is published in the *Journal officiel*, as well as on the internet site of the National Assembly.

During the 2010-2011 session (October 1, 2010 – September 30, 2011), 183 ordinary ballots took place, of which 61 were “formal”, one concerned a

Government statement in accordance with article 50-1, and one was on a statement of general policy by the Government. During these last two ballots, the rooms adjoining the chamber were used.

During the 2011-2012 session (October 1, 2011 – March 7, 2012), 71 ordinary ballots took place, of which 39 were "formal" and the vote on the overall text of the institutional bill on the reimbursement of presidential election campaign expenses, on its final reading, took place in the rooms adjoining the chamber.

III. – THE VALIDITY OF THE VOTE

1. – GENERAL RULES

Allowing for the aforementioned exceptions, ballots are held based on the majority of votes cast.

The result is declared by the President (with the words "*The Assembly has adopted*" or "*The Assembly has not adopted*").

After the end of the ballot, votes may not be changed; however, the nominative details of votes may require some adjustment when an M.P. makes a mistake regarding his vote or when he has not managed to vote because of a mishap.

2. – THE CHECKING OF VOTES

This is the task of the secretaries of the *Bureau* for certain ballots: ordinary public ballots using voting papers (in the case of the electronic voting system breaking down), public ballots at the rostrum or in the rooms adjoining the Chamber and secret ballots for individual appointments.

3. – THE QUORUM

In accordance with a Republican principle which is repeated in its Rules of Procedure, "*the National Assembly may deliberate and determine its agenda whatever the number of M.P.s present*". Votes are thus valid whatever the number of M.P.s present unless the chairman of a group asks for the checking of the quorum before the opening of the ballot. The quorum refers to the presence in the precincts of the National Assembly of an absolute majority of M.P.s (calculated on the number of seats actually filled). The request for a checking of the quorum was, for a long time, used as a means of obstruction. Since the reform of the Rules of Procedure of May 27, 2009, this practice has fallen into abeyance since this request is only now taken into account if the majority of the members of this group are, themselves, present in the Chamber. When a vote does not take place because of the lack of quorum, the sitting is adjourned and deferred by at least fifteen minutes and the vote is then valid no matter how many M.P.s are present.

File n°45

Making Government Accountability an Issue of Confidence

Key Points

Although article 20 of the 1958 Constitution states that the Government "shall be accountable to Parliament", article 50 clearly indicates that only a vote by the National Assembly can lead to the resignation of the Government.

Article 49 of the Constitution lays down three procedures for making Government accountability an issue of confidence before the National Assembly:

- Making the Government's programme or a statement of general policy an issue of confidence in the Government (article 49, paragraph 1). This is commonly known as a question of confidence;
- The tabling of a motion of censure by M.P.s (article 49, paragraph 2);
- Making the passing of a bill an issue of confidence in the Government (article 49, paragraph 3).

In practice M.P.s' use of these different procedures is extensively conditioned by the fact that a majority in the Assembly usually supports the Government.

☞ *See also files 3 and 23*

The Fifth Republic set up a hybrid political regime with certain characteristics of a presidential regime, and the essential elements of a parliamentary regime, notably the possibility for the National Assembly to hold the Government to account.

Article 20 of the 1958 French Constitution provides that the Government "shall be accountable to Parliament in accordance with the terms and procedures set out in articles 49 and 50". These terms and procedures reflect the desire of the framers to bring together two ideas often seen as opposed: governmental accountability and governmental stability.

Article 50 limits the power of censure solely to the National Assembly: "When the National Assembly passes a resolution of no-confidence, or when it fails to endorse the Government programme or general policy statement, the Prime Minister shall tender the resignation of the Government to the President of

the Republic". Such cases are the only ones requiring the Prime Minister to tender the resignation of his Government.

Article 49 of the French Constitution lays down three procedures for making Government accountability an issue of confidence before the National Assembly. The article also provides in its last paragraph for a procedure of approval of a statement of general policy by the Senate. A negative vote in this case would not lead to the resignation of the Government.

In addition, the constitutional revision of July 23, 2008, introduced two new monitoring procedures which on no account may call confidence in the Government into question: the passing of a resolution by one of the two assemblies (article 34-1) and declarations giving rise to a vote (article 50-1). In these two cases a negative vote would not force the Government to resign.

I. – ARTICLE 49, PARAGRAPH 1: MAKING THE GOVERNMENT'S PROGRAMME OR A STATEMENT OF GENERAL POLICY AN ISSUE OF CONFIDENCE IN THE GOVERNMENT

1. – PROCEDURE

This procedure is initiated by the Government and must be discussed in the Council of Ministers.

The Prime Minister alone may make the Government's programme or a statement of general policy an issue of confidence in the Government before the National Assembly.

According to article 152 of the Rules of Procedure of the National Assembly, it is the task of the Conference of Presidents to organize the debate following the conditions laid down in article 132, which stipulates that it must decide upon the overall time allotted to political groups (with half of the time being given to the opposition) and to non-aligned M.P.s. However until now, the practice has been to allot equal time (20 minutes) to each group and to provide each of them with a further 10 minutes (5 minutes for non-aligned M.P.s) for an explanation of vote.

An absolute majority of votes cast is required. The vote is by public ballot at the rostrum or in the rooms adjoining the Chamber.

2. – PRACTICE

The seeking of the confidence of the National Assembly is not obligatory upon a Government's entering office. Certain Governments have never done so, either because they wished to show that they held their legitimacy solely from the fact of having been appointed by the President of the Republic, or because, as was the case during the IXth term of Parliament of the Fifth Republic from 1988 to 1993, they did not command an absolute majority in the Assembly. However,

since 1993, every government has sought the confidence of the National Assembly within a few days of its appointment.

In addition, several Governments have, during their term, notably at the time of a specific event, sought the confidence of the National Assembly. In all, article 49, paragraph 1, has been used 34 times since 1958.

II. – ARTICLE 49, PARAGRAPH 2: THE TABLING OF A MOTION OF CENSURE INITIATED BY MEMBERS OF PARLIAMENT

1. – PROCEDURE

Members of Parliament may table a motion of censure through the President of the National Assembly. To be admissible, such a motion must be signed by at least one tenth of the members of the Assembly (i.e. 58 members when all constituencies are represented). Nonetheless, in order to avoid the over-use of such motions, each member may only sign such a motion three times during a single ordinary session and once during a single extraordinary session (the motions of censure following the making of a bill an issue of confidence in the Government, in accordance with article 49, paragraph 3 of the Constitution, are not included in this count). After the tabling of the motion, no signature may be added or removed. The names of signatories are listed in the verbatim minutes of the debates published in the *Journal Officiel.*

The discussion preceding the motion of censure is organized in exactly the same way as the debate preceding the motion of confidence with the stipulation that the first speaker must be one of the signatories of the motion of censure. In practice, a custom has arisen whereby each political group provides only one speaker and there are no explanations of vote.

Rationalized parliamentarianism, with its desire to provide governmental stability, has inspired two mechanisms:

– The tabling of a motion of censure leads to a 48-hour period during which no vote on the motion may be taken so as to avoid the possibility of votes being cast too impetuously. The Rules of Procedure of the National Assembly also stipulate the maximal time limit. They provide the Conference of Presidents with the task of fixing the timetable of the debate which must take place before the third day of sitting following the end of the limit set down by the Constitution;

– Only the members in favour of the motion of censure take part in the vote (which is held in the adjoining rooms to the Chamber and which is open for 30 minutes). The motion is only carried if it is supported by the absolute majority of the members of the National Assembly.

2. – PRACTICE

Only one motion of censure has ever been passed and that was in 1962. This motion was aimed at showing the National Assembly's hostility less towards the Government and more towards the plan of General de Gaulle, the then President, to have the head of state elected by direct universal suffrage. The General replied to the censure of the Government by announcing the dissolution of the National Assembly. The subsequent general election returned a majority to the Assembly in favour of the General's policy.

The 'majority phenomenon' has substantially reduced the impact of the motion of censure. Nowadays it is mainly used as a procedural weapon allowing the opposition to prompt a formal debate.

III. – ARTICLE 49, PARAGRAPH 3: MAKING THE ADOPTION OF A BILL AN ISSUE OF CONFIDENCE IN THE GOVERNMENT

1. – PROCEDURE

Making Government accountability an issue of confidence can be the result of the combination of two initiatives: that of the Prime Minister to seek this confidence before the Assembly over the passing of a Government or Member's bill in discussion in the Assembly, followed by that of the Members who reply by tabling a motion of censure.

The Prime Minister may make the passing of a finance bill or of a social security financing bill an issue of confidence in the Government. He may also use this procedure for one other Government or Member's bill per ordinary or extraordinary sitting. This limitation was introduced by the constitutional revision of July 23, 2008. Previously the Government could use the procedure as often as it considered it necessary and for any type of bill (during the IXth term of Parliament for example, the Government used article 49, paragraph 3 of the Constitution 39 times).

Prior debate in the Council of Ministers is required, as for the procedure making a Government programme or statement of general policy an issue of confidence.

The Prime Minister's decision brings about the immediate suspension, for twenty-four hours, of the discussion on the Government or Member's bill concerning which confidence has been sought. A motion of censure which fulfils the previously mentioned conditions of admissibility may be tabled during this period. Two directions may then be taken:

If no censure motion is tabled then the Government or Member's bill is considered passed;

If a censure motion is tabled, it is debated and voted upon in the same conditions as those applying to motions submitted 'spontaneously' by members.

If the motion is rejected, then the Government or Member's bill is considered passed. If the motion is carried then the bill is rejected and the Government is overthrown.

2. – PRACTICE

The use of article 49, paragraph 3 of the Constitution has varied since 1958. It was rarely used at the beginning of the Fifth Republic. However certain Governments had wide-scale recourse to it because they commanded a very small majority in the National Assembly (the Barre, Rocard, Cresson and Bérégovoy Governments in particular). However, contrary to its original rationale, the procedure has been particularly used to enable the pushing through of legislation on which a large number of amendments have been tabled. Nonetheless this use of the ultimate weapon against obstruction is not as easy as it used to be since the constitutional revision of July 23, 2008 attempted to limit the number of such uses per session.

File n° 46

The Resolutions of Article 34-1 of the Constitution

Key Points

The Constitutional Law n° 2008-724 of July 23, 2008 introduced article 34-1 into the Constitution authorizing the assemblies to pass resolutions.

A resolution is an instrument by means of which the Assembly provides an opinion on a specific question.

A draft resolution is tabled by a group chairman or by any M.P. and is subject to a double monitoring. According to the second paragraph of article 34-1 of the Constitution, the Government has the possibility of declaring it inadmissible before its inclusion on the agenda if it considers that its adoption or rejection could be considered an issue of confidence or if it contains an injunction to the Government. In addition, if it deals with the same subject as a previous draft examined over the same ordinary session, it may not be included on the agenda.

The draft resolution is meant to be examined during the sittings where the agenda is set by the Assembly. Inclusion on the agenda is decided during the Conference of Presidents, at the request of a committee or a group chairman, as soon as a minimum time period of six full days after its tabling, is respected.

☞ *See also files 22, 23, 26, 34 and 45*

The passing of resolutions is one of the ways for Parliament to affirm itself and to exercise a distinctive aspect of its legislative voice. A resolution is an instrument by means of which the Assembly provides an opinion on a specific question.

Before 1958, resolutions were a traditional technique for Parliament to express itself and their adoption could lead to a calling into question of confidence in the Government.

This practice was outlawed by the Constitution of the Fifth Republic in the name of rationalized parliamentarianism. A decision dating from June 17, 1959 included a limitation by the Constitutional Council of the field of resolutions as Government accountability could only become an issue of confidence in the conditions set down by articles 49 and 50 of the Constitution. Thus Parliament

was only allowed to pass resolutions which deal with measures of an internal nature.

A first breach was made in the wall by means of the constitutional revisions of June 25, 1992 and January 25, 1999. Article 88-4 thus allowed the assemblies to adopt resolutions dealing with drafts of or proposals for European acts.

The constitutional revision of July 23, 2008 followed upon this opening by introducing a new procedure in the conditions set by article 34-1 of the Constitution and by articles 1-6 of the Institutional Law n°2009-403 of April 15, 2009. A certain number of criteria have been defined in order to avoid any misuse of the procedure, which could be regarded as a vote of confidence in the Government.

I. – THE TABLING OF DRAFT RESOLUTIONS

According to article 1 of the Institutional Act n° 2009-403 of April 15, 2009, draft resolutions may be tabled either by one or several members of the Assembly or by a group chairman.

1. – PRESENTATION OF THE DRAFT RESOLUTIONS

No legislative or regulatory provision imposes any standard presentation for draft resolutions. There is no particular formal requirement (stamp, presentation by article or by paragraph, use of formulae, existence of a presentation of the case or even a limit to the length of the text).

2. – MONITORING OF ADMISSIBILITY BY GOVERNMENT

After tabling, the draft resolution is immediately transmitted by the President of the National Assembly to the Prime Minister who has the possibility of declaring the draft inadmissible in the conditions set by the second paragraph of article 34-1 of the Constitution and by article 4 of the institutional act.

In fact, these drafts cannot be included on the agenda if the Government considers that their adoption or rejection could be construed as an issue of confidence or if they contain an injunction to the Government. In the case of inadmissibility, the Government informs the President of the National Assembly of its decision which is the subject of an announcement in the *Journal officiel* (Laws and Decrees section). The author of the text is also informed by the President of the National Assembly.

II. – INCLUSION ON THE AGENDA

1. – SUCH DRAFT RESOLUTIONS ARE MEANT TO BE EXAMINED DURING THE SITTINGS WHERE THE AGENDA IS SET BY THE NATIONAL ASSEMBLY

The draft resolution is meant to be included on the agenda during the ordinary session, in principle, during the weeks given over to the examination of texts that the Assembly wishes to have debated or the weeks reserved to the monitoring of Government action and the assessment of public policies. The decision taken in the Conference of Presidents is then approved by the Assembly at the moment of the setting of the agenda as is required by article 48, paragraph one of the Constitution.

However, inclusion on the Government priority agenda is possible in the conditions laid down by article 48 of the Constitution and article 48 of the Rules of Procedure. In this case, the Government may request inclusion on the governmental agenda, so informing the President of the National Assembly at the latest, the day before the meeting.

In addition, a draft resolution could even be considered during an extraordinary session: in this case the decision to examine it lies with the President of the Republic.

2. – INCLUSION ON THE AGENDA IS DECIDED AT THE CONFERENCE OF PRESIDENTS

Inclusion on the agenda is decided at the Conference of Presidents in the conditions set down by articles 48 and 136 of the Rules of Procedure.

Two cases can be singled out:

– In principle, the group and committee chairmen address their drafts for inclusion on the agenda to the President of the National Assembly at the latest four days before the meeting of the Conference of Presidents;

– Nonetheless, article 136 of the Rules of Procedure allows group chairmen to inform the President of the National Assembly at the latest forty-eight hours before the holding of the Conference of Presidents.

The following cannot be included on the agenda:

– Draft resolutions dealing with the same subject as a previous draft discussed during the same ordinary session;

– Draft resolutions tabled for less than six full days;

– Draft resolutions against which the Government has informed the President of the National Assembly that it will claim inadmissibility in accordance with the second paragraph of article 34-1 of the Constitution.

III. – THE EXAMINATION OF DRAFT RESOLUTIONS

Draft resolutions tabled before the Assembly are not sent to a committee. They are examined and voted on in plenary sitting but may not be subject to amendments.

Furthermore, a draft resolution cannot be rectified by its author once it has been included on the agenda. In fact, such a possibility would not allow the Government to decide on its admissibility as its decision has to be transmitted to the President of the National Assembly before the inclusion on the agenda of the draft concerned.

File n° 47

Declaration of War and Armed Interventions Abroad

Key points

The powers of Parliament concerning defence policy were, for a long time characterized, both on account of the letter of the Constitution but also because of institutional practice, by relative weakness.

The constitutional reform of July 23, 2008 by increasing both the information which must be provided to Parliament and its monitoring of external operations, represents a major innovation in the world of the armed forces.

In contrast with the situation of other large democracies, the French Parliament has played, until very recently, a rather modest role in the implementation of defence policy.

The articles of the Constitution which underline the predominance of the Executive are in fact quite numerous. Indeed, the Head of State is also the Commander-in-Chief of the armed forces and he presides over the higher national defence councils and committees (article 15). He is the guarantor of national independence, territorial integrity and due respect for Treaties (article 5). In the case where serious and immediate threats endanger these vital interests, article 16 grants him the possibility of taking the "measures required by these circumstances"[1].

Article 21 provides, in addition, that the Prime Minister shall be responsible for national defence.

Thus, *de facto*, Parliament was restricted in these matters, according to article 35, to merely authorizing a declaration of war. This provision has never been used since the beginning of the Fifth Republic.

For several years, many proposals and reports have been put forward with a view to increasing the power of Parliament in such issues. This was all the more the case given that the number and the cost of external operations (OPEX) have

1. The Constitutional Act of July 23, 2008 restricted the powers of the President of the Republic in the implementation of this article.

grown substantially: some 10,000 to 12,000 troops are involved each year at a cost of nearly 852 million euros in 2008.

This question was looked at quite deeply by the Reflection and Proposal Commission on the Modernization and Re-balancing of the Institutions of the Fifth Republic, chaired by Mr. Edouard Balladur, former Prime Minister. The constitutional reform of July 23, 2008 added to article 35 by introducing an information and monitoring procedure of Parliament on the OPEX.

Thus, the Government must give prior information to Parliament concerning its decision to have the armed forces intervene abroad at least three days before the beginning of the intervention, and must detail the objectives of the intervention; the mechanisms for providing this information are at the discretion of the Government. The information which is so transmitted may give rise to a debate which is not followed by a vote.

After the intervention, in the case of the extension of external operations, the principle which is implemented is that of parliamentary authorization. This applies when the length of the intervention exceeds four months. Since the entry into force of the constitutional reform, the Assembly has had to make three such decisions:

- On September 22, 2008, it thus authorized the extension of the intervention of the armed forces in Afghanistan;
- On January 28, 2009, the extension of five interventions were authorized in Chad, in the Central African Republic, in Côte d'Ivoire, in Lebanon and in Kosovo;
- On July 12, 2011, the National Assembly discussed and authorized the extension of the intervention of the armed forces in Libya.

The Constitution however says nothing about the case of an extension of the OPEX over several years, as has been the case in Afghanistan since December 2001.

As external interventions are often linked to defence agreements, this also led to the broadening of thinking on the improvement of the information provided to Parliament on this issue.

In fact, since such agreements are not part of the international agreements listed in article 53 of the Constitution, there is no obligation for them to be ratified by virtue of a law. Thus, in accordance with a commitment made by the President of the Republic, the list of such defence agreements in force on January 1, 2008, was published in a white paper on defence and national security.

The military programming law for 2009-2014 completed these provisions by allowing for the fact, in the annexed report, that Parliament would henceforth be informed of the conclusion and guidelines of defence agreements.

File n°48

The Role of Standing Committees in the Monitoring of Government

Key Points

According to the Rules of Procedure of the National Assembly, the standing committees provide the National Assembly with the information necessary to enable it to carry out a monitoring role over Government policy. In practice, they have gradually begun to carry out the monitoring of Government action directly themselves.

This information is mainly gathered thanks to two instruments which the standing committees have been using more and more: hearings and fact-finding missions.

The Finance Committee has a specific role in the monitoring of the State budget both on account of the investigative powers which its special *rapporteurs* possess, and because of the setting-up of a body specialized in the assessment of the efficiency of public policy: The Assessment and Monitoring Mission (MEC). A similar body (The Assessment and Monitoring Mission for the Laws Governing Social Security or MECSS) has been set up within the Social Affairs Committee.

The standing committees also play an increasing role in the monitoring of the implementation of laws, particularly by following up the publication of the necessary regulatory texts.

The constitutional revision of July 23, 2008 further strengthened the role of standing committees in the field of monitoring by granting them the power to be consulted on certain appointments by the President of the Republic.

☞ *See also files 24, 49 and 50*

According to Article 145 of the Rules of Procedure of the National Assembly, "standing committees shall keep the House informed so that it can exercise its function of monitoring the policy of the Government". Institutional practice, and various reforms of the Rules of Procedure, have gradually provided the standing committees with a direct monitoring power over Government action.

I. – THE DUTY TO INFORM

1. – HEARINGS

The standing committees may meet with a non-legislative agenda in order to hold hearings with key figures.

Article 5b of the Ordinance of November 17, 1958, provides that an "ad-hoc or standing committee may summon any person whose interviewing it may deem necessary, whilst taking into account, on the one hand, subjects of a secret nature which concern national defence, foreign affairs, the internal or external security of the State and, on the other hand, the respect of the principle of the separation of the judicial authority from that of the other powers".

These provisions, which were introduced in 1996, grant the standing committees the right to summon any person of their choice (the fact of not replying to a summons is punishable by a €7 500 fine).

Increasingly, the standing committees are using this possibility to interview members of the Government, including the Prime Minister. These interviews may be public and so, open to the press – the *bureau* of the committee has control over the public nature of its proceedings and may use the means which it chooses to implement this control (article 46 of the Rules of Procedure). The standing committees also frequently interview experts or representatives of socio-professional circles.

Generally speaking, these hearings take place in the framework of the preparation of a bill, but they may purely and simply be for information reasons, particularly in the case of committees where legislative activity is less frequent (foreign affairs, defence).

2. – FACT-FINDING MISSIONS

Article 145 of the Rules of Procedure provides the standing committees with the possibility of setting-up temporary fact-finding missions. These missions may be individual or collective, they may be restricted to a single committee or be common to several committees, they may be of a short or longer length of time and they may or may not involve travel within France or abroad. Such missions are sometimes set up in order to prepare the examination of a bill or to monitor the implementation of a law recently adopted.

The fact-finding missions are usually concluded with the presentation of a report, whose publication can be authorized by the committee. Such a report may give rise to a debate without vote in plenary sitting or to a questions sitting.

The reform of the Rules of Procedure of May 27, 2009, strengthened the role of the opposition in these missions. In fact, according to article 145 of the Rules of Procedure, a mission which is made up of two members must include an M.P. belonging to an opposition group. A mission made up of more than two members must ensure that the political configuration of the Assembly is reproduced.

3. – THE GRANTING OF THE POWERS OF COMMISSIONS OF INQUIRY TO THE STANDING COMMITTEES

The Law of June 14, 1996, introduced into the Ordinance of November 17, 1958 on the functioning of the parliamentary assemblies, the article 5 *ter* which grants the standing committees the possibility of asking their assembly to take advantage of the prerogatives of commissions of inquiry (the power of examination of all documents, summons to hearing with criminal penalty attached, the right of communication) for a specific mission which must not last more than six months.

In 2011, this possibility was broadened to "the bodies set up within one of the parliamentary assemblies to monitor Government action or to assess public policies whose fields go beyond the scope of a single standing committee", (Law of February 3, 2011, aimed at strengthening the means of Parliament in matters pertaining to the monitoring of Government action and the assessment of public policies). Thus the Commission for the Assessment and Monitoring of Public Policies (CEC) of the National Assembly, as well as the delegations for women's rights of the two assemblies and the senatorial delegations for territorial communities and economic forecasting may all have this prerogative. However, the fact-finding missions and the joint parliamentary delegations of the two assemblies do not possess this possibility.

II. – THE MONITORING ROLE

1. – MONITORING THE BUDGET AND THE FINANCING OF SOCIAL SECURITY

The Institutional Act of August 1, 2001 concerning finance acts establishes the role of the Finance Committee as regards budgetary monitoring (previously, this role was based on article 164-IV of Ordinance n° 58-1734 of December 30, 1958 pertaining to the Finance Act of 1959). Article 57 of this law states that the finance committees of the National Assembly and of the Senate "*must follow and monitor the carrying-out of the finance laws and must assess all questions concerning public finances*". This mission is entrusted to their special *rapporteurs* (members of the committees who are responsible for the examination of all or part of the funding of a mission) or to several of their members appointed to do so.

In addition, the other committees must also examine the expenditure of the ministerial departments which fall within their field of competence. Thus, they appoint from within their committee, consultative *rapporteurs* who, nonetheless, do not have the same powers of investigation as their colleagues from a Finance Committee.

The budgetary *rapporteurs*, both special and consultative, obtain much of the information they need in the replies to the questionnaires sent out at the end of June to the ministries concerned.

The special *rapporteur* has a twofold mission. On the one hand, during the examination of the budget, he examines the funds allocated within a mission and presents a report on this allocation, firstly to the committee and then in plenary sitting. On the other hand, he permanently follows and monitors their usage.

All year long, the special *rapporteurs* of the Finance Committee have the right to examine all documents concerning the implementation of the finance act as well as the management of the public companies which come within their field of competence. Since 191 (article 146 of the Rules of Procedure), this monitoring can be carried out in the form of the publication of budgetary information reports.

Article 47-2 of the Constitution, introduced by te Constitutional Law of July 23, 2008, provides that the Court of Accounts must assist the Parliament in the monitoring of the implementation of the finance act and of the law governing the financing of the social security.

To add to this traditional action of the special *rapporteurs*, the Finance Committee of the National Assembly granted itself, in 1999, a new structure which reinforces parliamentary monitoring of the use of public funds and the efficiency of public expenditure: the Assessment and Monitoring Mission (MEC). Its main role is to carry out, each year, an assessment of the results of different public policies.

In August 2004, the Assessment and Monitoring Mission for the Laws Governing Social Security (MECSS), was set up, on the model of the Assessment and Monitoring Mission.

2. – MONITORING CERTAIN APPOINTMENTS

The constitutional revision of July 23, 2008 provided standing committees with an additional power: the right to be consulted on certain appointments and, if need be, to oppose them. Article 13, paragraph 5 of the Constitution provides that an institutional law shall determine the posts or positions, concerning which, on account of their importance in the guaranteeing of the rights and freedoms or the economic and social life of the Nation, the power of appointment vested in the President of the Republic shall be exercised after public consultation with the relevant standing committee in each assembly.

In this case the President of the Republic shall not make an appointment when the sum of the negative votes in each committee represents at least three fifths of the votes cast by the two committees.

The Constitution itself sets down a case in which such new provisions may be applied since appointments to the Constitutional Council, provided for in article 56, should be carried out according to this new procedure. The other posts and positions concerned are determined by the Institutional Law of July 23, 2010 concerning the application of the fifth paragraph of article 13 of the Constitution. It deals particularly with the positions of Chairman of the Authority on

Competition, General Inspector of the Prison Service and the Chairmen of the Public Television and Radio Companies.

The Institutional Law of July 23, 2010 indicates which standing committee may provide these opinions. The committees in charge of constitutional laws in the two assemblies are thus competent to provide opinions on the appointment of the Defender of Rights and certain members of the High Council of the Judiciary and of the Constitutional Council. However, it is the committees in charge of cultural affairs which provide an opinion on the appointment of the Chairman of the High Council on Audiovisual Matters.

In the framework of their prerogatives, the standing committees in charge of monitoring these appointments carry out a hearing of the person whose appointment is being considered, at least eight days after this person's identity has been made public.

3. – MONITORING THE IMPLEMENTATION OF LAWS

Since 2004, at the end of a period of six months following the coming into force of a law whose implementation requires the publication of regulatory texts, a report on the implementation of the said law must be presented to the relevant committee. This report describes the regulations which have been published and the decrees which have been issued in order to implement the said law, as well as the provisions which have not been subject to the necessary implementation instruments.

Since the reform of 2009, article 145-7 of the Rules of Procedure, reiterating but modifying the terms of the old paragraph 8, Article 86, , provides that such a report should be carried out by two M.P.s, one of whom must belong to an opposition group and one of whom must automatically be the *rapporteur* of the Government or Member's bill which is the subject of the implementation report.

During the XIIIth term of Parliament, 91 reports were published in accordance with these provisions.

File n°49

Commissions of Inquiry and Fact-finding Missions Set Up by the Conference of Presidents

Key Points

Commissions of inquiry came into existence in France along with the parliamentary system.

This was because the right of inquiry of the assemblies was considered as a corollary to the right to monitor. Nonetheless the procedure was not laid down in the Constitution.

On account of having been linked to various crises during the Third and the Fourth Republics, commissions of inquiry during the Fifth Republic were provided with a status which limited their action and which aimed at preventing any parliamentary intervention regarding the executive power and the judiciary.

However, thanks to the broadening of the scope of their investigation and to the publicity given to their hearings since 1991, commissions of inquiry are now an efficient means to gather information and to monitor, and their conclusions can have an impact on Government action. Since the constitutional revision of July 23, 2008, their status has been set down in article 51-2 of the Constitution which provides that "committees of inquiry may be set up within each House to gather information, according to the conditions provided for by statute".

Since 2003, the Conference of Presidents, upon the proposal of the President of the National Assembly, may set up temporary fact-finding missions.

☞ *See also files 23 and 26*

I. – COMMISSIONS OF INQUIRY

1. – THE SETTING-UP OF A COMMISSION OF INQUIRY

From 1991 on, the term "commission of inquiry" has been applied to bodies which formerly were known either as "commissions of inquiry" per se (those which dealt with a specific situation) or "monitoring commissions" (those which dealt with the administrative, financial or technical management of public services or State-run companies).

The setting-up of a commission of inquiry is entirely a parliamentary initiative. It takes the form of a motion tabled by one or several M.P.s requesting the setting-up of the said commission. This motion must set out the reasons for the request and must establish the object of the inquiry.

It is then transmitted to the relevant standing committee. The National Assembly then votes in plenary sitting.

From 1988 onwards, a convention was established allowing each political group the annual right to have one such motion requesting the setting-up of a commission of inquiry included on the order paper. This convention, which had fallen into abeyance, was strengthened and re-established by the reform of the Rules of Procedure of May 27, 2009. Henceforth each chairman of an opposition or minority group may request once per ordinary session, with the exception of that preceding the renewal of the Assembly, a debate in plenary sitting on the setting-up of a commission of inquiry. For the creation of such a commission of inquiry to be rejected, the negative vote must garner the support of three-fifths of the members of the Assembly. Only M.P.s who are against such a creation take part in the ballot.

a) The Admissibility of the Motion

In its report the standing committee gives its verdict on the admissibility of the motion as regards the law and also upon its timing.

According to the Rules of Procedure of the National Assembly, the motion has to "precisely set out the facts warranting the inquiry or…specify the public services or entities whose management is to be investigated by the committee". This requirement is not particularly demanding in practice.

In addition, the ordinance of November 17, 1958, concerning the functioning of the parliamentary assemblies, specifically prohibits the setting-up of a commission of inquiry concerning events which have led to legal proceedings and for as long as such proceedings continue. This is why the Rules of Procedure of the National Assembly make provision for the President to notify the Minister of Justice as soon as such a motion has been tabled.

The problem of the precise limits of the respective areas for parliamentary inquiry and judicial investigation has led to a complex jurisprudence; the interpretation which takes precedence is, that the existence of proceedings does not prohibit the setting-up of a commission of inquiry when it is so desired, but nonetheless limits its field of investigation to events not covered by the proceedings. Thus the flexibility of the interpretation of this rule has enabled, for example, the setting-up of commissions of inquiry into the Civic Action Service, sects, the *Crédit Lyonnais* bank, or the student social security system.

Whatever the case, the work of a commission of inquiry is automatically suspended upon the beginning of a judicial inquiry concerning the events which led to the establishment of the original commission of inquiry.

b) The Make-up of Commissions of Inquiry

Although the Ordinance of 1958 provided originally for the commissioners to be appointed by majority vote, a compromise has always meant that political groups are represented proportionately.

The revision of the Rules of Procedure of May 27, 2009, strengthened the cross-party nature of the commissions of inquiry. Henceforth their members are appointed proportionally according to the strength of political groups whilst their *bureau* must attempt to reproduce the political configuration of the Assembly and to ensure the representation of all its elements. In addition the positions of chairman or *rapporteur* must automatically be filled by a member of an opposition or minority group.

The commissions of inquiry have a maximum of thirty members, who elect their *bureau* and rapporteur by secret ballot. This *bureau* must be comprised of a chairman, four deputy chairmen, four secretaries and a *rapporteur*.

2. – THE WORK OF THE COMMISSIONS

a) Time Limits

The commissions of inquiry are of a temporary nature. Their mission comes to an end upon the filing of their report or at the latest six months from the date of the passing of the motion which set them up.

In addition, a commission of inquiry may not be reconstituted with the same mission within twelve months of the end of its original mission or of the end of the work of a mission set up by the Conference of Presidents on the same subject.

b) Important Powers

According to the Ordinance of 1958, "Commissions of inquiry are created in order to gather information…with a view to submitting the conclusions to the assembly which established them".

They organize their work according to the rules applicable to the standing committees. The law has drawn up their prerogatives in line with those of the Finance Committee:

– *The right of direct summoning*: every person whose evidence before the commission of inquiry is deemed useful by the chairman of the commission of inquiry is bound to appear before the said commission of inquiry. This summons may be made through a bailiff or a police officer. The witness's testimony is given under oath except for minors of under sixteen years old. The witness is, in addition, required to testify under the provisions of articles 226-13 and 226-14 of the Criminal Code, pertaining to professional secrecy. These obligations carry legal penalties if not carried out. In addition, the penalties applicable in the case of perjury or of bribery of a witness are equally applicable for

parliamentary inquiries. Legal proceedings may be instituted upon the request of the chairman of the commission of inquiry or upon that of the *Bureau* of the Assembly, when the report has been published. However, since the adoption of the law n°2008-1187 of November 14, 2008, witnesses who give evidence are protected against defamation, libel and slander concerning testimony given before a commission of inquiry unless they are outsiders to the subject of the inquiry;

– *The rapporteurs have very specific powers*: They carry out their mission with access to all evidence. All information which can make their task easier must be provided to them. They are empowered to see all department documents with the exception of those which are classified and concern national defence, foreign affairs, and the internal or external security of the State. This must all be carried out within the notion of the respect of the principle of the separation of the legal authority from all the other branches of power;

– *The contribution of the Court of Accounts:* since the Law of December 13, 2011 concerning the distribution of litigation and the streamlining of certain legal procedures, the communications of the Court of Accounts to the ministers and the answers which are provided, may be transmitted, upon their request, to the commissions of inquiry and the Court may carry out inquiries which are requested of it by the parliamentary commissions of inquiry on the management of departments or bodies which are subject to its monitoring or to that of the regional or territorial chambers of accounts;

– *The public nature of the hearings: each c*ommission of inquiry is free to organize the public nature of its hearings as it wishes, including television broadcasting. It may also, on the contrary, decide to meet "*in camera*". It must be stated that the notion of secrecy continues to be applied to the other work of the commission, for example to its internal deliberations concerning the drawing up of its report. The publication of the report means such deliberations can be made public.

Each commission of inquiry has a secretariat made up of civil servants of the National Assembly. The numerous hearings which it carries out are presented in minutes, which are often contained in annexes to its report. It may carry out missions in France (or, if necessary, abroad) and has a special budgetary allocation in the budget of the National Assembly for that purpose. It may also have recourse to the technical help of specialists.

c) The Conclusion of its Work

The report is adopted by the commission of inquiry and filed with the President of the National Assembly; this filing is recorded in the *Journal officiel*. The report is then published, unless the National Assembly meeting "in camera", following a request which must be made within five days of the filing, decides

otherwise. The report of a commission of inquiry may also be debated in plenary sitting without a vote (this was the case for the commission of inquiry on sects in 1996).

Anyone who divulges or publishes any information relative to the non-public work of such a committee of inquiry within twenty-five years, unless the report published at the end of the committee work has made reference to such information, will be subject to legal penalties. M.P.s who have been subject to a legal or disciplinary penalty on account of infringing the obligation of secrecy during non-public meetings of a commission of inquiry may not be reappointed to another commission of inquiry during the term of Parliament.

3. – THE ABILITY TO INFLUENCE WITHOUT THE POWER TO ORDER

a) Orienting Governmental Action

The conclusions reached and the proposals made have a great position in the reports of the commissions of inquiry. These reports clearly reflect the opinion of the majority of the commission, but it is customary to include in a separate section the opinion of minority commissioners.

The conclusions of the reports may lead to a debate without vote. M.P.s may also refer to them by using the procedures of classic parliamentary law, in particular by asking questions to the Government.

A reform of the Rules of Procedure of the National Assembly, adopted on 27 May 2009, makes provision, in the six months following the publication of the conclusions of the inquiry, for a member of the relevant standing committee, appointed by the said committee, to present a report to it on the implementation of the recommendations put forward by the said commission of inquiry.

b) Leading to Judicial Action

In carrying out their investigations, the commissions of inquiry may uncover criminal actions. Although they may not make a legal judgement on such actions or give a verdict on the penalties to be applied, the commissions of inquiry may transmit such information, upon his request, to the Minister of Justice with a view to opening a judicial inquiry or they may refer them directly to the State Counsel's Office in accordance with article 40 of the Code of Criminal Procedure (this was the case for the commission of inquiry on the influence of sectarian movements on minors, in 2006).

c) Encouraging Parliamentary Action

Standing committees, in their turn, may take up an issue examined by a commission of inquiry and go further in its investigation; it can happen that former members of a commission of inquiry may be involved in the tabling of a bill aimed at counteracting the shortcomings in legislation revealed by the inquiry.

Commissions of inquiry set up in the National Assembly during the XIIth term of Parliament

1. Commission of inquiry on the conditions of the presence of wolves in France and the practice of pastoralism in mountain areas;
2. Commission of inquiry on the economic and financial reasons for the disappearance of Air Lib;
3. Commission of inquiry on the management of public companies so as to improve the system of decision-making;
4. Commission of inquiry on the application of measures concerning the sea transport of dangerous products or pollution and the assessment of their efficiency;
5. Commission of inquiry on the health and social consequences of the heat wave;
6. Commission of inquiry on the development of local taxation;
7. Commission of inquiry in charge of finding the causes for the malfunctioning of justice in the so-called 'Outreau Affair' and of putting forward proposals to avoid their repetition;
8. Commission of inquiry concerning the influence of sectarian movements and the consequences of their practices on the psychological and mental health of minors.

Commissions of inquiry set up in the National Assembly during the XIIIth term of Parliament

1. Commission of inquiry on the conditions of the freeing of the Bulgarian nurses and doctor held in Libya and on the recent Franco-Libyan agreement.
2. Commission of inquiry on the situation of the French railway industry: production of "passenger" rolling stock and freight.
3. Commission of inquiry on the method used to plan, explain and manage the vaccination campaign for swine flu (H1N1)
4. Commission of inquiry on the speculation mechanisms affecting the functioning of economies.
5. Commission of inquiry on the financing mechanisms for employers' and employees' trade union organizations.
6. Commission of inquiry on risky financial products taken out by local public officials.
7. Commission of inquiry on the means, the financing and the impact on the environment of the plan to renovate the regional express train network (RER) for the Ile de France region.

II. – THE FACT-FINDING MISSIONS SET UP BY THE CONFERENCE OF PRESIDENTS

A provision of the Rules of Procedure of the National Assembly passed in March 2003, in the framework of the modernization of the work methods of the National Assembly which was modified in May 2009, grants the Conference of Presidents the possibility of setting-up fact-finding missions upon the proposal of the President of the National Assembly. The Constitutional Council has made it clear that such missions should be temporary and limit their role to fact-finding.

The setting-up of such missions within the Conference of Presidents, upon the initiative of the President of the National Assembly, confers a certain formality to work on sensitive subjects or current issues which interest all the political groups and all the committees. This is even more the case as the President of the National Assembly may chair such missions (fact-finding missions on religious symbols at school, on health insurance and on questions relating to history and remembrance).

Since 2009, the position of chairman or of *rapporteur* is automatically given to an M.P. belonging to an opposition group, if these two positions are not carried out by the same person.

This work involves hearings and sometimes even travels in France and abroad. The reports may lead to a debate without vote, in plenary session. Depending on the theme of the mission, it can lead to the tabling of a Members' bill, co-sponsored by all the members of the mission (the fact-finding mission on caring for people at the end of their lives), a Government bill (the fact-finding mission on religious symbols in school and on the family and the rights of children) or the presentation of a decree (the fact-finding mission on the prohibition of tobacco in public places).

Fact-finding missions set up by the Conference of Presidents during the XIIth term of Parliament

- Fact-finding mission on the question of religious symbols in schools (chaired by Mr. Jean-Louis Debré, President of the National Assembly);
- Fact-finding mission on caring for people at the end of their lives;
- Fact-finding mission on air-travellers safety;
- Fact-finding mission on the problem of health insurance;
- Fact-finding mission on the question of the experimentation and use of G.M.O.s (genetically modified organisms) ;
- Fact-finding mission on the family and the laws regarding children;
- Fact-finding mission on the dangers and consequences of exposure to asbestos;
- Fact-finding mission on bird-flu: preventive measures;
- Fact-finding mission on the green-house effect;
- Fact-finding mission on the prohibition of tobacco in public places.

Fact-finding missions set up by the Conference of Presidents during the XIIIth term of Parliament

- Fact-finding mission on questions relating to history and remembrance.
- Fact-finding mission on the revision of the laws on bio-ethics.
- Fact-finding mission on law n°2005-370 of April 22, 2005, concerning the rights of ill people and the end of life[1]
- Fact-finding mission on the policy of prevention of and struggle against violence against women.
- Fact-finding mission on the wearing of the full veil on the national territory.
- Fact-finding mission on the reasons for the damage caused by the storm named Xynthia.
- Joint fact-finding mission between the two assemblies on drug addiction.
- Fact-finding mission on the competitiveness of the French economy and the financing of social protection.
- Fact-finding mission on the analysis of the reasons for road accidents and on road safety.

1. The assessment mission on Law n° 2005-370 of April 22, 2005 concerning the rights of ill people and the end of life was set up on April 8, 2008. It had a special status given that its *rapporteur*, Mr. Jean Leonetti, had a double role, as he was requested to examine this law by both the Prime Minister and the President of the National Assembly.

File n°50

The Assessment of Public Policies

Key Points

The National Assembly has, over recent years, set up, in the framework of its prerogatives concerning financial monitoring, two permanent missions whose aim is to oversee the efficiency of public expenditure.

One, the Assessment and Monitoring Mission (MEC) is responsible for monitoring the use of public funds; the other, the Assessment and Monitoring Mission for the Laws Governing Social Security Financing Laws (MECSS), is in charge of checking the application of the laws concerning the financing of social security and of assessing all questions concerning the finances of social security.

In addition, the reform of the Rules of Procedure of May 27, 2009, set up the Commission for the Assessment and Monitoring of Public Policies (CEC). This commission enables the National Assembly to implement the mission of monitoring and assessment which is henceforth recognized by article 24 of the Constitution. It carries out assessments of public policies and brings its expertise to the impact studies which accompany bills tabled by the Government.

☞ *See also files 24, 48 and 52*

I. – THE ASSESSMENT AND MONITORING MISSION (MEC)

The Assessment and Monitoring Mission (MEC) is based on the *National Audit Office* of the British Parliament. It was set up within the Finance Committee in February 1999 following the conclusions of a working group on parliamentary monitoring and the efficiency of public spending which was at the origin of the Institutional Act on Finance Laws (LOLF). This group, at the end of its work, recommended the setting-up of a structure which would be responsible for the interviewing of political and administrative leaders on the management of their funds and which would carry out in-depth investigations into predetermined sectors of public policy.

This mission has the specificity of being co-chaired by an M.P. of the governing majority and an M.P. of the opposition. Its 16 members all belong to the Finance Committee and are appointed, in equal numbers representing the governing majority and the opposition, by the political groups. The Chairman of

the Committee and the General *Rapporteur* are *ex-officio* members. The other standing committees may request some of their members to attend.

The choice of themes dealt with by the Assessment and Monitoring Mission is decided by the *Bureau* of the Finance Committee which means that they can be co-ordinated with the overall work of the Committee.

The Assessment and Monitoring Mission works in collaboration with the Court of Accounts which is consulted in advance on the choice of themes decided upon. Members of the Court of Auditors attend its meetings. A report requested from the Court of Auditors in accordance with article 47-2 of the Constitution or with paragraph 2 of article 58 of the LOLF, is often at the origin of this work.

Its reports are systematically entrusted to two, even three, M.P.s and this means that the ruling majority and the opposition work together as well as other standing committees, so that consensual conclusions may be reached.

The working methods (essentially interviews but also *in-situ* visits and questionnaires to the relevant actors) are those of all the fact-finding missions. The interviews are open to the public and to the press with certain exceptions, particularly when national defence issues are at stake.

The LOLF also provides the MEC with the widespread powers given to *rapporteurs* to summons witnesses and to have access to all documents, with the exception of those concerning questions of a confidential nature (national defence, state security, judicial confidentiality, medical secret etc.).

The conclusions of the Assessment and Monitoring Mission (which deliberates *in camera*) are submitted to the Finance Committee so that it may decide whether or not to publish a report. Its proposals, which deal with concrete measures for the improvement of public policies, are often subject to a follow-up one year later: report or presentation in committee.

Furthermore, in accordance with article 60 of the LOLF, when the work of the MEC leads to observations which are transmitted to Government, the latter is required to provide a written reply within two months.

Information Reports of the Assessment and Monitoring Mission during the XIIIth term of Parliament

2007-2008

– The Financing of Naval Military Equipment
– The Allocation of Funding for Universities
– Human Resource Management at the Ministry for Ecology, Energy, Sustainable Development and Regional Development
– *Follow-up reports*: State-owned Real Estate
– The Impact of Architects and Archaeological Services in the Procedures for Safeguarding the National Heritage

2008-2009

– The Louvre Museum
– The Cost of External Military Operations, Notably under International Mandate
– The Financing of Departmental Fire and Aid Services (SDIS)
– Assessment and Perspectives for Competitive Clusters

2009-2010

– French Teaching Abroad
– The Research Tax Credit
– Extraordinary Defence Expenditure in 2009 and 2010

2010-2011

– Sub-contracting in the Defence Field

2011-2012

– The Sustainability of the Increase in the Wage Bill of the Civil Service
– The Financing of State Cultural Policy by Allotted Funds
– The Extra-budgetary Funding of Research and Higher Education

II. – ASSESSMENT AND MONITORING MISSION FOR SOCIAL SECURITY FINANCING LAWS (MECSS)

The Assessment and Monitoring Mission for Social Security Financing Laws (MECSS) was set up within the Committee in Charge of Social Affairs in December 2004 in accordance with article 38 of Law n° 2004-810 of August 13, 2004 concerning health insurance. Institutional Act n°2005-881 of August 2, 2005 concerning social security financing laws provided for its setting-up, broadened its scope for investigation and detailed its powers in articles L.O. 111-9, L.O. 111-9-1, L.O. 111-9-3 and L.O. 111-10 of the Social Security Code.

The MECSS permanently follows the implementation of social security financing laws and assesses any question concerning the financing of social security. It is jointly chaired by an M.P. of the governing majority and of the opposition and its eighteen members belong to the Social Affairs Committee and are appointed by the political groups. Its composition attempts to reproduce the political configuration of the Assembly and the other standing committees may request some of their members to attend.

The choice of themes dealt with by the MECSS is decided by the *Bureau* of the Social Affairs Committee after consultation with the Court of Accounts.

The working methods (essentially interviews but also *in-situ* visits) are those of all the fact-finding missions. The interviews are open to the public and to the press with some exceptions. In addition, the MECSS has widespread powers to summons witnesses and to have access to all documents, as well as to carry out inspections *in situ* of state administrations and social security bodies. Exceptions are made for questions of a confidential nature (national defence, state security, judicial confidentiality, medical secret etc.).

Since the Constitutional Act n°96-138 of June 22, 1996, the Court of Accounts assists Parliament in the monitoring of the implementation of social security financing laws. Article 47-2 of the Constitution which itself was introduced by article 22 of the Constitutional Act n°2008-724 of July 23, 2008, broadened the scope of this assistance regarding the assessment of public policies and thus of questions concerning the financing of social security. Therefore members of this institution take part in the preparatory meetings and in the hearings of the MECSS. The Court of Accounts also carries out inquiries on bodies under its inspection remit and the MECSS can benefit from such inspections.

In addition, the MECSS has obtained the agreement of the General Inspection of Social Affairs.

The conclusions of the MECSS (which deliberates *in camera*) are presented to the Social Affairs Committee and the report is then published in the conditions determined by the *bureau* of the committee.

In accordance with article L.O. 111-9-3 of the Social Security Code, when the work of the MECSS leads to observations which are transmitted to Government or to a social security body, both of the latter are required to provide a reply within two months.

Information Reports of the MECSS during the XIIIth term of Parliament

2008

– The Prescription, Consumption and Taxation of Medicines
– Long-term ailments

2009

– Results of the Young Children Welcoming Benefit
– The Fight Against Social Security Fraud
– The Operation of Public Hospitals

2010

– Functioning of Hospitals

2011

– Fight against social fraud

2012

– Health prevention

II. – THE COMMISSION FOR ASSESSMENT AND MONITORING (CEC)

The Commission for Assessment and Monitoring (CEC) was set up by the reform of the Rules of Procedure of May 27, 2009. It enables the National Assembly to implement the mission of monitoring and assessment which is explicitly recognized by article 24 of the Constitution. The CEC is an operational monitoring body which, on the one hand, carries out assessments of public policies and on the other hand, brings its expertise to the impact studies which accompany bills tabled by the Government.

Article 146-2 of the Rules of Procedure of the National Assembly provides that the CEC, which is chaired by the President of the National Assembly, includes a certain number of *ex-officio* members: the chairmen of standing committees and the chairman of the Committee in Charge of European Affairs; the General *Rapporteur* of the Finance Committee; the Chairman or the First Deputy Chairman of the Parliamentary Office for Scientific and Technological Assessment (OPECST) as well as the Chairman of the Parliamentary Delegation for the Rights of Women and for Equal Opportunities between men and women; the chairmen of each political group who may be replaced by a substitute. The commission also includes 15 other members appointed in the same way as the members of standing committees. The overall make-up of the commission is based upon the political configuration of the National Assembly.

In order to carry out its missions, which scope is strictly defined by the Constitutional Council (decision n° 2009-581 DC of June 25, 2009), the CEC has the following functions:

- It ensures the assessment of a broad range of public policies: the CEC, upon its own initiative or upon the request of a standing committee, assesses public policies in a broader remit than that of a standing committee. Each group may automatically obtain the right to one assessment per ordinary session (article 146-2 of the Rules of Procedure);
- It must be informed of the conclusions of fact-finding missions: the CEC is informed of the conclusions of fact-finding missions whether they be set up by a single standing committee, jointly organized by several standing committees or established by the Conference of Presidents (article 146-3 of the Rules of Procedure);
- It gives an opinion on impact studies accompanying bills: the chairman of a lead committee may refer a matter to the CEC so that it may give its opinion on the documents accompanying the bill and which summarize the impact study. It must decide if such documents are in conformity with the requirements set down in article 8 of Institutional Act n°2009-403 of April 15, 2009 concerning the application of articles 34-1, 39 and 44 of the Constitution (article 146-4 of the Rules of Procedure);
- It must put forward proposals for the agenda of the week given over to monitoring and assessment: in accordance with article 48 of the Constitution, the CEC may “in particular, propose the organization in plenary sitting, of debates without votes or sittings with questions on the conclusions of its reports or on those of the reports of fact-finding missions” of standing committees or of the Conference of Presidents (article 146-5 of the Rules of Procedure).

Work Programme of the CEC
during the XIIIth term of Parliament

2009-2010

– Implementation of Article 5 of the Charter for the Environment Concerning the Application of the Precautionary Principle
– Aid Policy for Disadvantaged Areas
– The Efficiency of Independent Administrative Authorities

2011

– Assessment of the Performance of Social Policies in Europe
– General Overhaul of Public Policies
– School Medicine

2012

– The Impact of the Lisbon Strategy on the French Economy
– Rural Areas
– Public Housing and Access to Public Housing for the Disadvantaged
– State Medical Aid
– The Assessment of the Mechanisms for the Promotion of Overtime

File n°51

Questions

Key Points

Questions, in their different oral and written forms, are the oldest parliamentary means of monitoring Government activity.

These procedures, which do not entail a vote and are of an individual nature, enable the M.P.s to be kept informed on specific subjects and current affairs without bringing a censure motion against the Government.

They are increasingly used today on account both of the media attention they generate (Government question time) and of their easy use which is not limited (written questions).

Questions represent the most direct (and for oral questions, the most immediate) form of monitoring of Government action by the Parliament.

I. – ORAL QUESTIONS

The right to question the Government during plenary sittings was established by the 1958 Constitution and was strengthened by the constitutional revisions of 1995 and 2008. Henceforth "during at least one sitting per week, including during the extraordinary sittings, (…) priority shall be given to questions from Members of Parliament and to answers from the Government" (final paragraph of Article 48, of the Constitution).

In this framework, the National Assembly, in agreement with the Government freely manages its oral question sittings. The conditions for tabling a question are laid down by the *Bureau* and the organization of the sittings is carried out by the Conference of Presidents.

The practice of asking oral questions, followed by a debate, has almost fallen into abeyance but a new practice, that of asking oral questions without debate, was established in 1974.

1. – ORAL QUESTIONS WITHOUT DEBATE

Oral questions are asked by an M.P. to a minister. This prohibits all collective questions (in particular those which could be asked by the chairman of a political group or of a standing committee).

They must be drafted briefly and be limited to those elements absolutely essential for the understanding of the question. The draft of the question, which is very often of a local nature for the M.P. who is the author, is then presented to the President of the National Assembly who in turn notifies the Government.

Since the constitutional reform of July 23, 2008, the Conference of Presidents has set down the principle that the sittings of oral questions without debate would be organized mostly during the monitoring weeks. They take place during the Tuesday and Thursday morning sittings. The number of questions asked per sitting, which previously was 25, has been raised to 32 and the distribution of questions between the groups is based on the principle of parity which is used during Government question time. The available time for each question including the minister's answer and a right to reply has been decreased from 7 to 6 minutes.

During the XIIIth term of Parliament, 60 question sittings were organized and 1,691 questions were asked.

2. – GOVERNMENT QUESTION TIME

Drawn up by the Conference of Presidents, the procedure of Government question time was implemented in 1974, in addition to the Rules of Procedure. It was designed to last for one hour per week. Since the introduction of the single parliamentary session in 1995, two sittings of one hour each have been given over to this procedure on Tuesday and Wednesday afternoons, during the ordinary session. In addition, since the constitutional revision of July 23, 2008, one sitting of one hour per week has been given over to questions during extraordinary sessions.

The organization of Government question time was changed in February 2009: the time given over to each question, including the minister's answer was reduced from 5 to 4 minutes, with 2 minutes for the question and 2 minutes for the reply and time devices were set up in the Chamber so that everyone can now check that this rule is respected.

This decrease has meant that 15 questions can be asked per sitting instead of the previous 12. In addition, parity between the governing majority and the opposition is maintained over the two sittings with 15 questions for the former and 15 for the latter. Non-aligned M.P.s may ask one question every two months.

During the sitting, the President calls out the questions in such a way as to have questions alternate between those coming from the governing majority and those asked by an opposition group. The first question is automatically asked by a member of the opposition or of a minority group.

Unlike the oral questions, questions to the Government are not tabled, notified or published in advance. In principle, their content is not communicated to the Government and only the names of the authors are transmitted one hour before the opening of the sitting. The spontaneous nature of these questions and the presence of the entire Government ensure a substantial audience at these sittings which, in addition, on account of their being televised, represent one of the high points of parliamentary life.

The content of the questions is entirely open (only insults and threats are prohibited). In practice, the dual procedure of oral questions and questions to the Government has enabled the first to be given over to questions of local interest and the second to political questions of a more general nature.

During the XIIIth term of Parliament, 4,033 questions were asked to the Government in 287 sittings.

3. – QUESTIONS TO A MINISTER

Within the framework of the week given over each month to monitoring, the Conference of Presidents decided in 2009 to set up a new procedure involving questions to a minister. This resembles the procedure known as "fine-tooth comb questions" which was implemented between 1989 and 1992.

This innovative procedure, based on short questions (2 minutes) with a right to reply of 1 minute was quite rarely used: on March 25, 2009, the Minister for Higher Education and Research was questioned; on May 5, 2009, the Minister of the Interior and the Minister of Justice were questioned and on June 2, 2009, the Minister for Housing was questioned.

II. – WRITTEN QUESTIONS

This procedure, for which provision is made in the Rules of Procedure of the National Assembly, also represents an individual prerogative of the M.P.s. It is the only parliamentary procedure of this kind which takes place outside the framework of the plenary sitting and whose results come at a later date.

Written questions are asked by an M.P. to a minister. Only those dealing with the general policy of the Government are asked to the Prime Minister.

Written questions must be drafted briefly and be limited to those elements absolutely essential for the understanding of the question. They must include no accusation of a personal nature regarding any person mentioned. In addition, the principles of separation of powers and immunity of the Head of State prohibit the author from calling into question the actions of the President of the Republic.

The draft of the written question is then presented to the President of the National Assembly who in turn notifies the Government. Since the beginning of the current term of Parliament, M.P.s table their questions electronically using the specialized internet portal. The written questions are published each week,

both during and outside sessions, in a special supplement of the *Journal officiel* which includes the answers of ministers to previously asked questions. These answers must be published in the two months following the publication of the questions.

On account of its easy use and because of the fact that it has no limit, the written questions procedure is very popular. It allows the M.P.s to question ministers on issues often directly concerning their constituents, when they so desire (even during recess) and as often as they so wish. The first consequence of this has been an unbridled increase in the number of written questions: the total has risen from 3 700 written questions tabled in 1959, to 12,000 in 1994 and to 28,365 in 2011.

To some extent, it can be said that the procedure has been the victim of its own success since, faced with this "tidal wave", the Government has been experiencing growing difficulties in replying within the statutory time limits.

In order to solve this problem, 1994 witnessed the implementation of a procedure called 'highlighted questions'. Each week, during the session, the chairmen of the political groups choose a small number of questions (around twenty-five according to a proportional distribution chart) from amongst those written questions which have remained unanswered beyond the statutory limit (i.e. two months). These questions are highlighted in the *Journal officiel* and ministers commit themselves to answering them within ten days. This commitment has always been respected, with only a few exceptions, since the introduction of this procedure in 1994.

Although the deadlines for answering are far from always being met, at the end of the XIIth term of Parliament, the overall percentage of replies per written question was 94.6%.

The replies to such questions have no legal status and do not bind the administration, except in fiscal matters where they are considered as the expression of the administrative interpretation of the texts.

During the XIIIth term of Parliament 131,660 written questions were asked, of which 104,354 obtained an answer and 2,868 were 'highlighted'.

The possibility of carrying out question and answer searches on the internet site of the National Assembly (section "*organization et travaux*"or "organization and proceedings") represents a very precious instrument of documentation which is open to M.P.s, administration and the general public.

File n°52

The Monitoring of the Implementation of Laws and the Assessment of Legislation and Public Policies

Key Points

Follow-up on the implementation of laws has become one of the main missions of Parliament. It has a double aim: to check the implementation of the laws passed and to influence the concrete conditions of their application.

For a decade now, parliamentary monitoring of the implementation of laws has extended to the assessment of the legislation in accordance with the new approach to public action. This takes into account the effects and the social impact of the decisions taken, in terms of the objectives set and the means invested.

Several mechanisms have been set up since 1996 in order to meet these new demands. Amongst them:

- The presentation before standing committees of implementation reports concerning laws which require the publication of rules of a regulatory nature;
- The setting-up of assessment and monitoring missions within the standing committees e.g. the MEC (an assessment and monitoring mission in charge of evaluating each year the results of certain public policies) set up within the Finance Committee of the National Assembly and the MECSS (the Assessment and Monitoring Mission for Social Security Financing Laws) set up within the Social Affairs Committee of the National Assembly and the Senate;
- The setting-up of the Commission for the Assessment and Monitoring of Public Policies (CEC).

☞ *See also files 24, 48, 49, 53 and 54*

I. – THE MONITORING OF THE IMPLEMENTATION OF LAWS IN PRINCIPLE FALLS WITHIN THE REMIT OF THE STANDING COMMITTEES

The growing complexity of laws means that more and more often they depend on regulatory implementation rules. M.P.s follow up the application of the laws which they pass, with great attention. They do so especially in order to avoid the failure of such laws on account of the lack of publication of implementation rules.

Since 1990, the General *Rapporteur* of the Finance Committee has been carrying out an examination of the state of implementation of the fiscal provisions of the laws dealt with by the committee (i.e. not only the finance acts but also all those laws concerning provisions of an economic and financial nature). Similarly, in the spring, he presents an information report on the first available data concerning the application of the preceding year's budget.

This practice has become widespread and was extended to all the standing committees in 2004. In fact, since this date, at the end of a period of six months following the coming into force of a law whose implementation requires the publication of regulatory texts, a report on the implementation of the said law is presented to the relevant committee. This report describes the regulations which have been published and the decrees which have been issued in order to implement the said law, as well as the provisions which have not been subject to the necessary implementation instruments.

Since the reform of 2009, article 145-7 of the Rules of Procedure which restated and modified the terms of the former eighth paragraph of article 86, provides for the writing of this report by two M.P.s, one of whom must belong to an opposition group and one of whom must automatically be the *rapporteur* of the Government or Member's bill which is the subject of the implementation report. The reports on the implementation of laws may, by virtue of this article, give rise, in plenary sitting, to a debate without vote or to a questions sitting.

So as to monitor the application of laws, the standing committees may also use impact studies which are attached to the law. Article 8 of Institutional Act n°2009-403 of April 15, 2009 concerning the implementation of articles 34-1, 39 and 44 of the Constitution states, in fact, that "the documents which present the impact study are attached to the bills as of their transmission by the *Conseil d'État*. They are tabled before the first assembly to which the bill is referred at the same time as the bill which they deal with". These impact studies notably present, in great detail, the state of the law in the national jurisdiction in the target field(s) of the bill, the means of application of the foreseen provisions over time, the legislative and regulatory texts which must be repealed and the provisional measures proposed.

II. – THE MONITORING OF THE IMPLEMENTATION OF LAWS HAS GRADUALLY BEEN COUPLED WITH AN ASSESSMENT OF THE EFFECTS OF THE LEGISLATION

The new approach to public action which takes into account the effects and the social impact of the decisions taken, in terms of the objectives set and the means invested, has been integrated into the parliamentary monitoring of the implementation of laws.

A growing number of texts include an internal monitoring mechanism, which can range from the simple requirement of an implementation report to the setting-up of assessment mechanisms.

On its side, the National Assembly has used existing mechanisms or has created new tools so as to assess the legislation. In June 1990, for instance, a modification of its Rules of Procedure enabled the setting-up of temporary fact-finding missions, being drawn, if necessary, from several committees, which would deal, in particular, with the conditions of the implementation of legislation. In addition, the remit assigned to such fact-finding missions and commissions of inquiry tends more and more towards an assessment of a particular area of policy or of a particular law.

1. – The commission for the Assessment and Monitoring of public policies (CEC)

The Commission for Assessment and Monitoring of Public Policies (CEC) was set up by the reform of the Rules of Procedure of May 27, 2009. It enables the National Assembly to implement the mission of monitoring and assessment which is explicitly recognized by article 24 of the Constitution. The CEC is an operational monitoring body which, on the one hand, carries out assessments of public policies and on the other hand, brings its expertise to the impact studies which accompany bills tabled by the Government.

Article 146-2 of the Rules of Procedure of the National Assembly states that the CEC, which is chaired by the President of the National Assembly, includes a number of *ex-officio* members: the chairmen of standing committees and the chairman of the Committee in Charge of European Affairs; the General *Rapporteur* of the Finance Committee; the Chairman or the First Deputy Chairman of the Parliamentary Office for Scientific and Technological Assessment (OPECST) as well as the Chairman of the Parliamentary Delegation for the Rights of Women and for Equal Opportunities between Men and Women; the chairmen of each political group who may be replaced by a substitute. The commission also includes 15 other members appointed in the same way as members of standing committees. The overall composition of the commission is based on the political configuration of the National Assembly.

In order to carry out its missions, the scope of which is strictly defined by the Constitutional Council (decision n° 2009-581 DC of June 25, 2009), the CEC has the following functions:

– It ensures the assessment of a broad range of public policies: the CEC, upon its own initiative or upon the request of a standing committee, assesses public policies in a broader remit than that of a standing committee. Each group may automatically obtain the right to one assessment per ordinary session (article 146-3 of the Rules of Procedure);

- It must be informed of the conclusions of fact-finding missions: the CEC is informed of the conclusions of fact-finding missions, whether they be set up by a single standing committee, jointly organized by several standing committees or established by the Conference of Presidents (article 146-4 of the Rules of Procedure);
- It gives an opinion on impact studies accompanying bills: the chairman of a lead committee or the President of the National Assembly may refer a matter to the CEC so that it may give its opinion on the documents accompanying the bill and which summarize the impact study. It must decide if such documents are in conformity with the requirements set down in article 8 of Institutional Act n°2009-403 of April 15, 2009 concerning the application of articles 34-1, 39 and 44 of the Constitution (article 146-5 of the Rules of Procedure);
- It may put forward proposals for the agenda of the week given over to monitoring and assessment: in accordance with article 48 of the Constitution, the CEC may "in particular, propose the organization in plenary sitting, of debates without votes or sittings with questions on the conclusions of its reports or on those of the reports of fact-finding missions" of standing committees or of the Conference of Presidents (article 146-7 of the Rules of Procedure);
- It may carry out a preliminary assessment of an M.P.'s or the lead committee's amendment upon the request of its author or in the case of a committee amendment upon the request of the chairman of that committee (article 146-6 of the Rules of Procedure).

2. – Assessment and Monitoring Missions

The Assessment and Monitoring Mission (MEC) was set up in 1999 within the Finance Committee of the National Assembly. Its mandate is to assess, each year, the results of certain public policies. This body has two specificities by comparison with the other missions set up by committees:

- It is, in reality, a permanent structure (set up for one year, it is renewed every year);
- The governing majority and the opposition have equal representation on it and a position of deputy chairman is given to the opposition.

In the same way an Assessment and Monitoring Mission for the Social Security Financing Laws (MECSS) was set up within the Social Affairs Committee in 2004. It also has equal representation and is a structure which monitors the spending on social issues and thus enables M.P.s to better follow the implementation of the laws governing the financing of social security and to ensure that the new legislative and statutory instruments correspond well to the financial objectives set.

3. – DELEGATIONS

The Parliamentary Delegation for the Rights of Women and Equal Opportunities between Men and Women was set up in 1999 and given the mandate, by law, of following up the implementation of the laws within its sphere of competence.

Before the creation of the Sustainable Development, Spatial and Regional Planning Committee took away its *raison d'être* and led to its disappearance, the Parliamentary Delegation for Regional Planning and Sustainable Development, set up in 1999, was in charge of "*assessing the policies*" carried out in this field.

Set up by Law n° 2007-1443 of October 9, 2007, the Parliamentary Delegation on Intelligence, which is a joint body between the National Assembly and the Senate, is in charge of "*following the general action and means of the specialized services placed under the authority of the ministers in charge of internal security, defence, the economy and the budget*". It must gather information and evidence concerning the budget, general activity and organization of the intelligence services in the departments placed under the authority of the ministers concerned. It may make recommendations and observations to the President of the Republic and to the Prime Minister. The delegation also draws up an annual public report. Nonetheless, given the extremely sensitive nature of some information, certain restrictions are imposed on the delegation both on the gathering and the publicizing of the data to which it is party.

File n°53

The Parliamentary Office for Scientific and Technological Assessment

Key Points

The Parliamentary Office for Scientific and Technological Assessment (OPECST), was set up by law and is an information body jointly run by the National Assembly and the Senate.

It is made up of eighteen M.P.s and eighteen Senators. Its mandate, in the wording of the law, is "to inform Parliament of the consequences of the choice of scientific and technological options, in particular, so as to enable it to make enlightened decisions".

I. – THE CREATION OF THE OPECST

At the beginning of the 1980s, at the time of a certain number of debates such as that on the direction of nuclear or space programmes or on the territorial cabling plan, the Parliament realized that it was not in a position to independently judge all Government decisions on the broad orientations of scientific and technological policy.

Therefore, it decided to set up its own expertise and assessment body specialized in issues linked to the development of scientific knowledge and of new technologies: the Parliamentary Office for Scientific and Technological Assessment (OPECST).

Set up by Law n°83-609 of July 8, 1983, with the unanimous agreement of Parliament, this body has, as its mandate, according to the wording of the law, "*to inform Parliament of the consequences of the choice of scientific and technological options, in particular, so as to enable it to make enlightened decisions*". To do this it "*collects information, sets up study programmes and carries out assessments*".

II. – THE CONSTRUCTION AND OPERATION OF THE OPECST

1. – THE STRUCTURE OF THE OFFICE

The OPECST is an unusual structure within the Parliament: this delegation whose members are appointed in order to ensure the proportional representation of political groups, is run jointly by the National Assembly and the Senate. It is composed of 18 M.P.s and 18 Senators. Its chairmanship is carried out by a member of one of the two assemblies in alternation, for a three-year term. The law stipulates that the first deputy chairman must belong to the other assembly.

The OPECST is an intermediary between the world of politics and the world of research. It is aided by a Scientific Council, the composition of which reflects the wide range of scientific and technological disciplines. This Scientific Council, which is made up of 24 leading figures appointed by the Delegation on account of their expertise, may be convened by the Chairman of the OPECST as often as he feels it necessary.

2. – REFERRAL

Matters may be referred to the OPECST either by the *Bureau* of one or the other of the assemblies (upon its own initiative or upon the request of the chairman of a political group or that of sixty M.P.s or forty Senators) or by an *ad-hoc* committee or a standing committee. Up to the moment, there has been about the same number of referrals from one of the *Bureaux* as studies requested by standing committees.

3. – APPOINTMENT OF THE *RAPPORTEUR*

Every referral must lead to the appointment by the OPECST of one or several *rapporteurs*, selected exclusively within the Office. Around one third of the studies have been entrusted to two *rapporteurs*, generally one from the ruling majority and one from the opposition. Around half such studies have brought together an M.P. and a Senator.

III. – THE WORK

1. – THE REPORTS OF THE OPECST: STUDY PROGRAMMES IN SEVERAL STAGES

a) Feasibility Studies

Once the *rapporteur* has been appointed, he first of all carries out a feasibility study. The aim of such a study is to establish the state of knowledge on the subject, to decide on possible fields of research, to judge the possibility of obtaining useful results in the required time limit and also to determine the means necessary for the carrying out of a study programme.

The *rapporteur* then puts the conclusions of his feasibility study to the members of the OPESCT. This must be accompanied by a methodological

reflection. He then suggests either the opening-up of a study programme leading to the drawing-up of a report, which is far from being the most frequent case, or the reformulation of the referral (for instance, a referral which originally dealt with bio-fuels was broadened to include the perspectives for the development of agricultural production for non-food uses), or even, in exceptional circumstances, dropping the work entirely.

b) Drafting the Report

When the decision to open up the study is taken, the *rapporteur* holds private hearings which enable him to gather the opinions of leading scientists or representatives of industry, associations, administration or agencies. He may also hold public hearings open to the press and carry out missions in France or abroad.

To help him in his work, the *rapporteur* may set up a working group or a "steering committee" made up of leading experts from outside Parliament.

c) The Powers of the rapporteurs

The law provides OPECST *rapporteurs* with the same powers as special *rapporteurs*: they may thus have free access to all evidence in state bodies and can examine all administrative documents with the exception of those concerning national defence or state security. Thus two *rapporteurs* carried out two unannounced visits to nuclear power plants in 2011. In addition, in case it encounters obstructions in carrying out its tasks, the OPECST may ask, for a period not exceeding six months, to obtain the powers attributed to parliamentary commissions of inquiry.

d) The Publication of the Report

The reports of the OPECST are not limited to gathering the various opinions of experts. The collected information is analysed by the *rapporteurs*. At the end of their study, they put their conclusions and recommendations to the members of the OPESCT. The latter decide on the publication of this work or not. It should be noted that the decisions of the OPESCT are taken, in these cases, more often than not, unanimously.

The reports whose publication is approved by the OPECST are submitted to each assembly.

e) The Topics of the Reports

Since the setting-up of the OPECST, nearly 150 reports have been published dealing with a broad range of subjects: for instance, reports on developments in the micro/nanoelectronic field, on the risks and dangers for human health of everyday chemical substances, on the questions posed by the issue of synthetic biology, on the light shed by science and technology on the compensation of handicaps, on the implementation of better security measures at

dams and other hydraulic facilities, on the impact of research on the assessment of halieutical stocks and fishing management or on the national energy strategy.

Certain referrals have been renewed (monitoring of the safety and security of nuclear installations, developments in the semi-conductor field, high definition digital (HDD) television, bio-technologies). This allows the OPESCT to ensure the carrying out of up-dates on the implementation of its recommendations.

f) Assessment reports of the implementation of laws

Several laws provide, in addition, for an assessment by the OPESCT of the implementation of some or all of their provisions. This type of referral was added to that laid down by the Law of 1983. The laws of 1994, 2004 and 2011 concerning "bioethics", that of 1998 concerning the strengthening of health controls and the monitoring of health security of products for human use, the 2005 programming law setting the guidelines for energy policy, the 2006 programming law concerning the sustainable management of radio-active waste and matter or that of 2006 on research, are all examples of this.

2.– PUBLIC HEARINGS

If the *rapporteur* considers it necessary, public auditions, open to the press, may be held so as to gather, or to oppose, the opinions of experts and organizations wishing to express an opinion on a specific subject. The minutes of these public hearings may then be annexed to the report.

In addition, the OPESCT more and more frequently holds public hearings, open to the press, where opposing opinions may be expressed so all points of view on these subjects for topical debate may be heard. This procedure, which was introduced in 1997 with the holding of a "day of study" on the information society, has led to debates on such widely different subjects as the crisis linked to the legionnaire's disease epidemic of 2003, the international governance of the internet, scientific expertise, the London Protocol on European patents, radiotherapy, bio-fuels, the recognition of research, personal medical files, the impact of science and technology on the development of financial markets, mathematics in France and in the sciences or the issues surrounding strategic materials.

Public hearings also enable the OPESCT to realize the changes which have taken place since the publication of a previous report. Those held in 2006 and 2007 on biometrics, nanotechnologies and tuberculosis perfectly fitted in with this desire.

3.– OPECST BULLETINS

These are short brochures of four pages on topical subjects such as nuclear medicine, bio-fuels, electromagnetic fields and health.

They are drawn up upon the initiative of members of the OPECST based on the model of the "PostNotes" of the British Parliament. They are approved by the

Chairman and First Deputy Chairman and then transmitted to all MP.s and to all correspondents of the OPECST. They may also be consulted on the internet.

IV. – OPENING UP TO THE OUTSIDE WORLD

1. – RELATIONS WITH SCIENTIFIC BODIES

Although this was not part of its original mission set down by the Law of 1983, the OPECST has been led, in the framework of its parliamentary monitoring function, to develop institutional relations with the actors of the scientific and technological community. These relations took on a specific importance during the XIIIth term of Parliament.

Certain of these regular exchanges are provided for by the law, such as the annual presentation of the activity report of the Nuclear Safety Authority (Law of June 13, 2006) or more recently that of the Biomedicine Agency (Law of July 7, 2011). The annual partnership between the Parliament and the Academy of Sciences, which enables the organization, since 2005, of twinnings between M.P.s and Senators, on the one hand, and Academy members and researchers on the other is, despite its informal structure, extremely successful and involves more and more parliamentarians who are not members of the OPECST. The Academy of Technologies has taken the initiative of formalizing a systematic information exchange partnership with the OPECST on their respective work. Other types of contact have occurred in the shape of visits to laboratories or more classically in the form of hearings. The Chairman of the OPECST has, in addition, made a distinct effort to receive in individual discussions numerous personalities of the world of science and technology.

Several laws involve the OPECST in the appointment of M.P.s or qualified figures to scientific bodies and this includes the direct presence of the Chairman or several members of the OPECST on their boards of management.

During the XIIIth term of Parliament, the OPECST became specifically interested in the structure of French research. This was particularly true as it was requested by the Ministry of Research and Higher Education to provide a considered opinion on the national strategy for research and innovation and as it encouraged, by means of a public hearing, the setting-up of thematic research alliances. Following up on the launching of the “Grand Emprunt” (a national loan scheme), the OPECST has worked on the cooperation between the national research alliances and the General Commissariat for Investment and has been very keen to make a first appraisal of future investments.

2. – GENERAL INTERNATIONAL ACTIVITIES

The OPECST contributes to the opening-up of Parliament to the knowledge and good practices of foreign countries by means of three other directions:

- First of all, by continuing to support its investigations through visits and meetings in the various places in the world which are relevant to the subjects of its studies (in this respect, special mention should be made of trips to Germany and to Japan for the report on the future of nuclear power, or the trip to Switzerland for the study on the energy efficiency of buildings;
- Secondly, by taking part in exchange meetings within the *European Parliamentary Technology Association* (EPTA), an informal club of the European bodies tasked with dealing with scientific and technological assessment for national Parliaments and for the European Parliament. The National Assembly hosted a colloquium of the EPTA in September 2008 as part of the French Presidency of the European Union. In addition, the European partners of the OPECST have been requested to provide their national contribution to several public hearings;
- Lastly, by receiving numerous foreign delegations which come to reap the French experience in fields which have been previously harvested by the OPECST. This task is essentially carried out by the Chairman on behalf of the OPECST.

File n°54

Parliamentary Delegations

Key Points

Parliamentary delegations, which were set up by laws, are think tanks which, unlike parliamentary offices, exist distinctively in each assembly.

Between 1979 and 2007, six such delegations were set up by legislators:

- The Parliamentary Delegation for Demographic Problems (1979);
- The Parliamentary Delegation for the European Communities (1979), which became the Parliamentary Delegation for the European Union in 1994;
- The Parliamentary Delegation for Planning (1982);
- The Parliamentary Delegation for the Rights of Women and Equal Opportunities between Men and Women (1999);
- The Parliamentary Delegation for Regional Planning and Sustainable Development, (1999);
- The Parliamentary Delegation on Intelligence (2007).

The constitutional revision of July 23, 2008 and the modification of the Rules of Procedure of the assemblies led to the setting-up in both the National Assembly and the Senate of a Committee in Charge of European Affairs which replaced the Parliamentary Delegation for the European Union.

Law n° 2009-689 of June 15, 2009 led to a reduction in the number of parliamentary delegations, some of which had no longer any reason to exist or had very little regular activity.

A new Parliamentary Delegation on Overseas has been set up in July 2012.

☞ *See also file 52*

For several years now, the National Assembly, like the Senate, has been seeking to develop an independent assessment capacity.

It was in this framework that various delegations were set up by law:

– The Parliamentary Delegation for Demographic Problems (set up by Law n° 79-1204 of December 31, 1979). This delegation was drawn from both the National Assembly and the Senate. Its mandate was to inform the assemblies of the results of the policy implemented to increase the

birth rate and the application of laws concerning birth control, contraception and voluntary interruption of pregnancy;

- The Parliamentary Delegation for Regional Planning and Sustainable Development, (Law n°99-533 of June 25, 1999) in charge of assessing spatial and regional planning policies and of informing parliamentary bodies of the drawing-up and the implementation of collective service plans as well as the application of planning contracts;
- The Parliamentary Delegation for the European Communities, which became the Parliamentary Delegation for the European Union (Law n° 94-476 of June 10, 1994 which modified Law n° 79-564 of July 6, 1979) in charge of following the work carried out by the institutions of the European Union;
- The Parliamentary Delegation for the Rights of Women and Equal Opportunities between Men and Women (set up by Law n° 99-585 of July 12, 1999) in charge of informing the assemblies of the policy followed by the Government as regards consequences in the field of women's rights and the equal opportunities between men and women as well as of following the evolution of the law in this area;
- The Parliamentary Delegation on Intelligence (set up by Law n° 2007-1443 of October 9, 2007) which is a joint delegation between the National Assembly and the Senate.

Law n° 2009-689 of June 15, 2009 which modified Ordinance n°58-1100 of November 17, 1958 concerning the functioning of the parliamentary assemblies abolished the parliamentary delegations on planning and that on demographic problems. It also abolished the Parliamentary Delegation for Regional Planning and Sustainable Development in order to take into account the setting-up at the National Assembly of a standing committee in charge of these issues.

The aforementioned law also formally recognized the transformation of the Delegation for the European Union into the standing committee in charge of European Affairs in each of the two parliamentary assemblies.

Thus, at the end of the XIIIth term of Parliament there were only two active parliamentary delegations – the Parliamentary Delegation for the Rights of Women and Equal Opportunities between Men and Women and the Parliamentary Delegation on Intelligence. A new delegation, the Delegation in Charge of Overseas France, was set up in July 2012, at the beginning of the new term of Parliament.

I. – THE DELEGATION FOR THE RIGHTS OF WOMEN AND EQUAL OPPORTUNITIES BETWEEN MEN AND WOMEN

Law n° 99-585 of July 12, 1999 set up, within each of the assemblies of Parliament, a Parliamentary Delegation for the Rights of Women and Equal Opportunities between Men and Women.

Each of these delegations has thirty-six members appointed "*in such a way as to ensure the proportional representation of political groups, balanced between men and women as well as between the standing committees*".

At both the National Assembly and the Senate the delegation's "*mandate is to inform the National Assembly of the Government's policy and the impact it has on the rights of women and on equal opportunities between men and women. In this area, it ensures the follow-up of the implementation of the laws*". The delegation's mandate covers a wide area but it must be carried out "*without entering either the remit of the standing or ad-hoc committees or that of the committees in charge of European Affairs*".

The following matters may be referred to the delegation:

– Government and Members' bills by the *Bureau* of the National Assembly, either on its own initiative or upon the request of a chairman of a political group, or by an *ad-hoc* or standing committee, either on its own initiative or upon the request of the delegation;

– Texts submitted in accordance with article 88-4 of the Constitution, by the committee in charge of European Affairs.

The delegation of the Assembly may request to interview ministers and the Government must transmit to it all useful information as well as the documents necessary for the carrying out of its brief.

In the case of referral concerning a Government or a Member's bill, the work of the delegation leads to the filing of a recommendation report on the Table of the relevant assembly. This report is also transmitted to the relevant committees and to the committee in charge of European Affairs. It is made public.

Amongst the most significant of the reports filed by the delegation of the National Assembly concerning bills examined by the Assembly, are the following:

– Equality between men and women in politics (January, 2000, February, 2003, July, 2003, February, 2007, January, 2008 and May, 2010);

– Civil rights: Patronymic names (January, 2001), rights of the surviving spouse (January, 2001), parental authority (June, 2001), divorce (October, 2001, March, 2004), prohibition of the hiding of one's face in public spaces (June, 2010);

– Social rights: gender equality in the workplace (March and November 2000, January, 2012), income equality between women and men (April,

2005), women and retirement (July, 2008, October, 2009 and July, 2010), part-time work (July, 2011), long-term care and cover (November, 2011);

– Protection against domestic violence (the curbing of violence within couples, December, 2005);

– The situation of women in prison (Prisons bill, September, 2009);

– Women's exclusive rights: emergency contraception (September, 2000), voluntary interruption of pregnancy and contraception (November, 2000, October, 2008), contraception for minors (May, 2011).

In addition, the delegation publishes an annual activity report, which may include, if need be, proposals for the improvement of legislation and regulations in the areas of its competence. For instance, it has published studies on the follow-up of the laws concerning professional equality between women and men in part time work, on immigrant women, on the lack of economic security for women, on the follow-up of the Law of July 4, 2001 concerning the voluntary interruption of pregnancy and contraception, on the learning of equality at school or on the place of women in the working world.

On top of this, the delegations of the National Assembly and of the Senate may organize conferences and decide to hold joint meetings.

For instance, on July 3, 2008, the delegations of the National Assembly and of the Senate took part in a conference of the parliamentary committees for equal opportunities between men and women of the European Union. This conference dealt with the commitment to the objectives of the roadmap for equality between men and women adopted by the European Commission for the period 2006-2010.

II. – THE PARLIAMENTARY DELEGATION ON INTELLIGENCE

The Parliamentary Delegation on Intelligence was set up by Law n° 2007-1443 of October 9, 2007 and is shared between the National Assembly and the Senate.

It is made up of four M.P.s and four Senators, including the chairmen of the standing committees of the National Assembly and the Senate respectively in charge of internal security affairs and defence, who are *ex-officio* members. The other M.P.s and Senators are appointed by the President of each assembly to ensure cross-party representation.

The remit of the delegation is "to follow the general action and means of the specialized services placed under the authority of the ministers in charge of internal security, defence, the economy and the budget". It must gather information and evidence concerning the budget, general activity and organization of the intelligence services in the departments placed under the authority of the ministers concerned.

It may make recommendations and observations to the President of the Republic and to the Prime Minister. The delegation also draws up an annual public report.

Nonetheless, given the extremely sensitive nature of some information, certain restrictions are imposed on the delegation both on the gathering and the publicizing of the data to which it is party.

Therefore, the information and the evidence which the delegation gathers may not deal with “the operational activities of the services, the instructions given by public authorities in this regard and the financing of these activities”. Nor may they deal with “exchanges with foreign services or with international bodies working in the intelligence field”. The members of the delegation may not have “information which might put in jeopardy the anonymity, the security, or the life of a person working or not for the relevant services as well the anonymity or the security of the operational methods needed for intelligence gathering”. The work of the delegation is covered by the notion of national defence secrecy. The respect of this confidentiality is an obligation for the members of the delegation and thus excludes the publication of any information or any evidence which is thus protected.

III. – THE PARLIAMENTARY DELEGATION ON OVERSEAS FRANCE

The Conference of Presidents which met on Tuesday, July 17, 2012, decided, upon the proposal of Mr. Claude Bartolone, President of the National Assembly, to set up a delegation for overseas France at the National Assembly. This delegation is tasked with informing the national representation on any issue concerning overseas France. It participates, in particular, in the assessment of the public policies carried out in the overseas departments, in the overseas communities and in New Caledonia. Such a structure, which already exists at the Senate, fills a gap and strengthens the presence of overseas France at the National Assembly. The Delegation on Overseas France is composed of 63 M.P.s of whom 27 are M.P.s elected from overseas France who are all automatically members.

File n° 55

The Other Means of Information Available to M.P.s

Key points

Amongst the many means which are available to M.P.s to obtain the information necessary for the exercise of their office, one must consider the study groups made up of M .P.s in order to follow a specific question, and the holding of symposiums on the premises of the National Assembly.

In addition, in order to clarify the relations between M.P.s and the representatives of public or private interests, the *Bureau* adopted, on July 2, 2009, transparency and ethical rules which could be applied to the activities of such representatives at the National Assembly. The aim is both to establish the role that they play in providing information to M.P.s and to ensure that their activity conforms to a few simple rules of good conduct.

☞ *See also files 48 to 54*

The means by which M.P.s can gather the information necessary for the exercise of their office are extremely varied. The contacts which they have, either in Paris or in their constituencies, with heads of administrations, public bodies, professional trade unions, associations and beyond that with their voters allow them to collect *de jure* or *de facto* much information on the way the law is applied and improvement which could be made. They also have the various departments of the National Assembly at their disposal to answer their requests (documentation made available, writing of memoranda etc.). In addition, parliamentary work presents various ways for obtaining information from the Government or from representatives of civil society (hearings in committee, written and oral questions, fact-finding missions, commissions of inquiry, reports transmitted by Government to Parliament etc.).

This file aims at examining the means of information which are not dealt with in the other files: the activities of study groups, the holding of symposiums on the premises of the National Assembly and the enrolment of representatives of certain interest groups on a list set up by the *Bureau*.

I. – STUDY GROUPS

Study groups are bodies open to all M.P.s and are set up to examine specific questions more deeply and to follow them. These questions may be of a political, economic, social or international nature. Such groups do not intervene directly in the legislative procedure. Their task is to ensure that a legal and technical watch be kept on issues which are too specialized to be subject to detailed examination by standing committees (problematic, sector of activity etc.). The study groups are also unique fora for discussions and exchanges between M.P.s of all sides.

In order to ensure the respect of the prohibitions laid down by article 23 of the Rules of Procedure which forbids the setting-up within the National Assembly of any "*group representing private, local or occupational interests which binds its members*" or of any "*meeting in the precincts of the House … of any permanent association, whose purpose is to represent such interests*", the setting-up of a study group is subject to an approval procedure by the *Bureau*.

Every request made by an M.P. for such a group to be set up is examined by a specialized delegation of the *Bureau* of the National Assembly, chaired by a vice-president, (this is called the Delegation in Charge of Study Groups and Representatives of Interest Groups). Before presenting its conclusions, the delegation consults the relevant standing committee to discover if the subject of the group appears compatible with the exercise of its statutory powers and the conduct of its work. Then, based on the report of its delegation, the *Bureau* grants or rejects its approval for the setting-up of the study group. It is also the task of the *Bureau* to decide on the political group which will hold the chairmanship of the study group. It is then up to the political group to appoint the chairman of the study group, who is usually *de facto* the M.P. at the origin of the request.

Approval provides the right to a certain number of operational advantages (the possibility of reserving meeting rooms, of printing and sending invitations, the assistance of a volunteer civil servant in charge of the secretariat). However study groups receive no operational financing.

There were 116 such groups at the end of the XIIIth term of Parliament. As of January 2013, 75 study groups had been set up since the beginning of the XIVth term. The range of themes covered is extremely diverse: sects, insurance, tourism, rural areas, towns and suburbs, regional languages, longevity, cancer, ethics and doping in sport, animal protection, the chocolate industry, etc.

As they enjoy broad operational flexibility, the study groups develop many various activities: hearings of members of the Government, of heads of administration, of experts from the concerned sector (CEOs, representatives of professional federations or trade unions, heads of associations etc.), visits to sites and to companies, participation in events outside the National Assembly (symposiums, corporate exhibits etc.).

II.– THE ORGANIZATION OF SYMPOSIUMS AT THE NATIONAL ASSEMBLY

The National Assembly may make available certain of its premises for the holding of symposiums or seminars. These are meant to encourage exchanges between M.P.s and the various actors of civil society (representatives of the world of industry, of research, of the university etc.).

This organization is bound by a certain number of rules. The availability of rooms, in particular to outside bodies, is subject to the M.P. providing an application and a room reservation form which have been countersigned both by him and by the chairman of his group. The final decision for providing the room is in the hands of the College of *Questeurs*. It is, in addition, required that the organizers provide a sum for the room and the reimbursement of the technical expenses.

III.– THE REPRESENTATIVES OF CERTAIN INTERESTS AT THE NATIONAL ASSEMBLY

So as to introduce more transparency and ethics into the relationships between M.P.s and the representatives of public or private interest groups (administrative authorities, public bodies, private companies, professional organizations, consulting firms, associations etc.), the *Bureau* adopted, on July 2, 2009, new rules which are applicable to the activities of these representatives at the National Assembly. The aim is both to establish the role that they play in providing information to M.P.s and to ensure that their activity conforms to a few simple rules of good conduct.

The rules adopted by the *Bureau*, now included in article 26 of its General Instruction, provide that the representatives of public or private interest groups, appearing on a list set by the *Bureau*, or by its relevant delegation, be provided with badges which grant them access to the *Palais Bourbon*. These representatives thus have entry to the "*Grande Rotonde*", the "*Salon de la Paix*" and the "*Salle des Quatre Colonnes*" (rooms or spaces in the *Palais Bourbon* often frequented by M.P.s either before or after sittings), except for the latter, on Tuesdays and Wednesdays, one hour before the opening of the afternoon sitting and up to 30 minutes after the end of Government question time.

In order to appear on this list, the representatives must, along with their employer, fill out a form providing information on their activities and the interests which they defend and address it to the Secretary General of the Presidency. These representatives must also sign up to the code of conduct adopted by the *Bureau*.

The requests are then examined by the Delegation in Charge of the Representatives of Interest Groups. Enrolment on the list is approved by the *Bureau* or by its Delegation.

After a report of the Delegation in Charge of the Representatives of Interest Groups, the *Bureau* can decide to withdraw from the list, either provisionally or definitively, a representative of an interest group who has not respected this code.

Code of Conduct Applicable to Representatives of Interest Groups adopted by the *Bureau* on July 2, 2009

1. The representatives of interest groups shall provide the *Bureau* with the required information in order to have access rights to the premises of the National Assembly defined in article 26, paragraph III-B of the General Instructions of the *Bureau*. They must also subsequently transmit to the *Bureau*, all data which would be liable to modify or complement this information.

2. In their contacts with M.P.s, the representatives of interest groups must provide their identity, the body for which they work and the interests they represent.

3. They must follow the rules of movement in the premises of the National Assembly which have been set by the General Instructions of the *Bureau*. They must clearly wear their identity pass when on the premises of the National Assembly.

4. It is strictly prohibited for them to sell or to exchange against any form of compensation, parliamentary documents as well as any other document of the National Assembly.

5. It is strictly prohibited for them to use headed notepaper or the logo of the National Assembly.

6. The representatives of interest groups must refrain from any behaviour which would appear to be seeking information or decisions by fraudulent means.

7. Information provided to M.P.s by the representatives of interest groups must be open without discrimination to all M.P.s whatever their political tendencies.

8. This information must not include elements which are purposefully incorrect so as to mislead M.P.s.

9. All trading or advertising is strictly prohibited for the representatives of interest groups on the premises of the National Assembly.

10. The representatives of interest groups cannot take advantage, with a third party, for trade or advertising purposes, of their presence on the list set by the *Bureau.*

File n°56

The National Assembly and the Formulation of European Instruments

Key Points

The role of the National Assembly in the formulation of Community instruments is mainly carried out through the application of article 88-4 of the Constitution.

This article in the wording resulting from the Constitutional Act of July 23, 2009, provides that the Government submits to Parliament every draft of or proposal for a European Union instrument.

It also provides that the assemblies may pass European resolutions on these instruments, as well as on any document issuing from a European Union institution. These resolutions, even if they are not legally binding, nonetheless can have quite a political impact.

The European Affairs Committee of the National Assembly plays a central role in the implementation of this procedure.

In addition, the Treaty of Lisbon provides Parliaments with the mission of overseeing the respect of the principle of subsidiarity. To this end, as of the entry into force of the said treaty, article 88-6 of the Constitution provides that the National Assembly may issue reasoned opinions as to the conformity of draft proposals for European Acts with the principle of subsidiarity. This procedure had already been put into practice in an informal way as of the second half of 2006.

After the European decision-making process, the National Assembly may, since the entry into force of the Lisbon Treaty on December 1, 2009,, institute proceedings before the Court of Justice of the European Union against a European Act concerning the violation of the principle of subsidiarity. This procedure is automatic upon the request of 60 M.P.s or 60 Senators.

The French Parliament also implements the transposition of European directives which require the adoption of national legislative measures.

☞ *See also file 57*

I. – PARLIAMENTARY INTERVENTION AT THE STAGE OF THE FORMULATION OF EUROPEAN INSTRUMENTS

1. – THE PROCEDURE OF ARTICLE 88-4 OF THE CONSTITUTION

The field of European instruments monitored by the French Parliament has been progressively and continuously broadened. Introduced into the Constitution in 1992, on the occasion of the constitutional revision prior to ratification of the Maastricht Treaty, Article 88-4 first of all required the Government to lay before the National Assembly and the Senate any drafts of or proposals for instruments of the European Communities or the European Union containing provisions which are matters for statute, as soon as they had been transmitted to the Council of the European Union. On top of this obligation, as part of the ratification process of the Amsterdam Treaty in 1999, the Government was provided with the possibility of laying before the assemblies, European texts which, though not statutory in character, can be considered as likely to give rise to Parliament taking a position.

To complete this process, the constitutional revision of 2008 extended the spectrum of instruments which must be submitted to the assemblies by the Government, to all drafts of or proposals for acts of the Communities or of the European Union transmitted to the Council of the European Union.

a) The Examination and Monitoring Role of the European Affairs Committee

The European Affairs Committee examines all drafts of or proposals for European instruments which the Government submits to Parliament in application of article 88-4 of the Constitution (see articles 151-2 of the Rules of Procedure of the National Assembly). Approximately 1000 European texts are thus submitted annually to the Committee.

Texts deemed of minor importance or that do not involve any specific difficulty may be tacitly approved.

The other texts are presented orally by the Chairman of the Committee or a specially appointed *rapporteur* who reports on the content and the explanatory memorandum of the draft European instrument, any feedback, compliance with the subsidiarity principle, the legal basis adopted as well as the probable schedule for its examination. The examination sheets of all the E documents are regularly published as part of the Committee's '*balai*' or 'hold-all' reports (information reports bringing together texts laid before the National Assembly in application of Article 88-4 of the Constitution).

As regards each of the texts which it so examines, the European Affairs Committee can decide:

– To approve the draft of or the proposal for a Community instrument;

– To defer taking a decision when it feels it lacks information to assess the scope of the text and it may possibly appoint an information *rapporteur* tasked with addressing in greater depth the examination of the document;

– To oppose the adoption of the draft of or the proposal for a Community instrument.

Its decision may be accompanied by:

– The adoption of conclusions (text of a political character expressing the Committee's point of view);

– The adoption of a motion for resolution which, as it expresses a position of the National Assembly, in application of article 88-4 of the Constitution, will be communicated to one of the eight standing committees.

b) The "Parliamentary Scrutiny Reserve" Mechanism

The idea of parliamentary scrutiny reserve was introduced in 1994 and was defined by the Prime Minister's circular of June 21, 2010 concerning the participation of Parliament in the European decision-making process. It means that the National Assembly and the Senate are entitled to vote – for or against – a proposal for an instrument before its adoption by the Council of Ministers of the European Union. It lays down that the Government, before making any pronouncement within the Council of the Union, must check that Parliament has not announced its intention of taking a position on a proposal for a European instrument by granting it, for this purpose, a minimum period of eight weeks beginning upon their transmission in the case of draft legislative instruments and four weeks in the case of other draft instruments. These time periods are part of the eight-week interval, laid down by the protocol on the role of national parliaments, appended to the Lisbon Treaty, during which the Council of the Union cannot adopt a common position or a decision with respect to a legislative proposal received from the Commission.

There is however an emergency examination procedure which allows the Government to ask the Chairman of the European Affairs Committee to reach a decision on a draft European instrument, without convening the Committee, when the European schedule requires the urgent adoption of a text.

c) The Adoption of Motions Concerning Drafts of or Proposals for European Instruments.

Whilst the adoption of conclusions only expresses the position of the European Affairs Committee, motions for resolution express that of the National Assembly as a whole.

Any M.P. may table a draft European resolution which may deal, since 2008, not only with documents transmitted by the Government but also with any document issuing from an institution of the European Union.

These drafts are sent for prior examination to the European Affairs Committee, which must, upon the request of the Government, a group chairman or a chairman of a standing committee, file its report within a month of the request. The European Affairs Committee may also, as has been seen, itself take the initiative of tabling a draft resolution.

One of the eight standing committees of the National Assembly then examines the text adopted by the European Affairs Committee or, when it has been rejected, the original motion for resolution. If it does not reach a decision within one month of the report being tabled by the European Affairs Committee, the text is considered as having been tacitly approved.

Within fifteen days of the publication by electronic means by the standing committee of the adopted or taken-as-adopted text, the motion for resolution can be included on the agenda of the National Assembly, upon the request of a group chairman, a committee chairman, the chairman of a committee or the Government. If no request for inclusion on the agenda is made or if the Conference of Presidents rejects this request or makes no decision on it, the text adopted or taken-as-adopted by the lead committee is considered final. It is transmitted to the Government and published in the *Journal officiel* ('Laws and Decrees' edition).

The use of article 88-4 of the Constitution represents the contribution of Parliament to the drawing-up of the French position during negotiations within the Council. It can also be the way for the National Assembly to enter into direct dialogue with the institutions of the European Union.

In any case, the parliamentary resolutions of article 88-4 are not legally binding and their impact is exclusively political. France does not recognize the notion of "negotiation mandate" used in Scandinavian countries where the Government is tied to the position of the Parliament.

d) Gradual Implementation Due to Gain Momentum

Between June 25, 1992 and June 1, 2012, the National Assembly adopted 226 European resolutions. Most of them were adopted during the first years of the implementation of article 88-4 of the Constitution, before the slowing-down trend was reversed during the last term of Parliament: 74 during the Xth term of Parliament, 51 during the XIth term, 41 during the XIIth term and 60 during the XIIIth term.

As regards the number of conclusions adopted by the European Affairs Committee on documents submitted by Government in application of article 88-7, the movement is in the other direction: they increased from 18 during the XIth term of Parliament (1997-2002) to 77 during the XIIth term (2002-2007) and dropped to 60 during the XIIIth term (2007-2012).

However, the examination of resolutions in plenary sitting has become more and more unusual: 33 resolutions were passed in plenary sitting during the

X^th term of Parliament, 8 during the XI^th term, 6 during the XII^th term and 3 during the XIII^th term.

It should however be noted that the new version of article 48 of the Rules of Procedure of the National Assembly provides that for one sitting during the one week out of four which is given over to monitoring Government action and the assessment of public policies, priority is given to European questions.

2. – THE MONITORING OF SUBSIDIARITY

Article 88-6 of the Constitution lays down the mechanisms for the implementation in France of the monitoring of subsidiarity which has been provided to national Parliaments by the Lisbon Treaty.

The adoption mechanism for resolutions concerning the conformity of a European Act with the principle of subsidiarity (see articles 151-9 and 151-10 of the Rules of Procedure of the National Assembly) is identical to that for European resolutions laid down in article 88-4 of the Constitution. The time limits for examination set for the European Affairs Committee and for the standing committees are however reduced from one month to fifteen full days so as to allow the National Assembly to express an opinion within the eight weeks provided by the Treaty of Lisbon to national Parliaments in order to give their view. It must be noted that this procedure has a real legal impact: draft acts which are rejected by half of national Parliaments could themselves be rejected, as of first reading and by simple majority, by the Council of the European Union or by the European Parliament.

Upon an initiative of the President of the European Commission, national Parliaments have been putting this new procedure to the test informally since September 1, 2006. In this framework, the National Assembly has issued three reasoned opinions. Since the coming into force of the Treaty of Lisbon on December 1, 2009, the Assembly has adopted two resolutions containing reasoned opinions challenging the conformity of a legislative instrument with the principle of subsidiarity.

The same procedure applies to the adoption of resolutions concerning the institution of proceedings, within the two months following the publication of the relevant acts, before the Court of Justice of the European Union for the violation of the principle of subsidiarity. Nonetheless, in accordance with the last paragraph of article 88-6 of the Constitution, the institution of such proceedings is automatic when it is supported by, at least, sixty M.P.s. As yet the National Assembly has not used this procedure.

II. – THE OPENING-UP OF THE NATIONAL ASSEMBLY TO EUROPE

1. – EUROPE AT THE *PALAIS BOURBON*

During recent years several initiatives have been taken to open up the National Assembly more to Europe.

Since January 2003, a debate has been held systematically in plenary sitting before every meeting of the European Council.

The new version of article 48 of the Rules of Procedure of the National Assembly provides that during one sitting of the week of sittings out of four given over to the monitoring of Government action and the assessment of public policies, priority should be given to European questions.

Article 151-1-1 of the Rules of Procedure of the National Assembly, in the wording resulting from the text passed on May 27, 2009, provides that the European Affairs Committee may give a European perspective during the examination of national Government or Members' bills dealing with an area covered by the activity of the European Union. It can do this by presenting observations, on the one hand, to the lead committee for the Government or Member's bill and on the other hand, in plenary sitting when the Conference of Presidents invites it to do so. In this framework, the European Affairs Committee formulated observations on two Government bills during the XIIIth term of Parliament.

Since 2003, the National Assembly has had an office and a permanent representation to the European Union in Brussels. The main aim of this representation is to strengthen the information provided to parliamentarians on the activities of the Union's institutions, to keep them informed of the realities of Europe, in particular by organizing working visits to Brussels and to Strasbourg and to encourage inter-parliamentary co-operation. This office is at the disposal of the various bodies of the National Assembly and of all M.P.s.

In a similar vein, the President of the National Assembly took the initiative of setting up a new multimedia space given over to Europe, adjacent to the Chamber. Computers also provide permanent access to internet through a choice of sites dedicated to Europe: current news from the institutions, a range of think-tanks, analytical sites, web TV, work of the Assembly on Europe, inter-active sites with local representatives. This portal is also accessible for all M.P.s through the intranet of the National Assembly.

2. – INTER-PARLIAMENTARY COOPERATION

The various bodies of the National Assembly also play an active and growing part in the development of inter-parliamentary co-operation.

During the French presidency of the Council of the European Union in the second half of 2008, twelve meetings brought together the representatives of the 27 Parliaments and of the European Parliament on major issues on the agenda of

the European Union (meetings of the chairmen of the standing committees of the 27, Conference of Community and European Affairs Committees of Parliaments of the European Union –COSAC-, joint parliamentary meetings on the initiative of the European Parliament and the Conference of the Presidents of Parliaments of the European Union which took place in the aftermath of the French presidency of the European Union, at the *Palais Bourbon* on February 27-28, 2009).

In addition, the Assembly is keen to encourage specific dialogue on the major texts which are on the agenda of the European Union. This is particularly the case concerning its special cooperation with the German *Bundestag* (twice yearly meetings of the "Weimar Triangle", in which the Polish Parliament also participates, a working group on European economic governance set up in the autumn of 2011 and bringing together the representatives of the political groups of the Assembly and of the *Bundestag*, etc.). The Assembly also thus makes active use of the new technologies of communication (visio-conference in January 2010 between the European Affairs Committee of the National Assembly and the relevant committee of the European Parliament on a draft directive concerning the rights of consumers, etc.).

File n°57

The European Affairs Committee

Key Points

The European Affairs Committee, which took over from the Delegation for the European Union in 2008, is tasked, according to article 88-4 of the Constitution, with following the affairs of the European Union.

It is made up of 48 M.P.s and carries out a double role of providing information on and monitoring European activity for the benefit of French national representatives. It does this both by carrying out regular hearings (members of the Government, European officials, various eminent figures) and by publishing numerous information reports.

It examines all draft European acts as well as all draft European resolutions and draft opinions of the National Assembly on the respect of the principle of subsidiarity.

It may also cast a European perspective on the national Government and Members' bills which deal with areas covered by the activity of the European Union.

It also is actively involved in the fostering of inter-parliamentary co-operation between the 27 Parliaments of the states of the Union and the European Parliament.

☞ *See also file 56*

Up until 1979, no internal body of the National Assembly nor the Senate, was specifically tasked with following European issues. Each of the Assemblies in fact appointed representatives to sit in the European Parliament and to present, each year, an information report on the activities of that institution to the Foreign Affairs Committee. However, from 1979 on, the election of M.E.P.s by universal suffrage, has broken this institutional link and led to the setting-up in both the National Assembly and the Senate of a Delegation for the European Communities, renamed "Delegation for the European Union" in 1994.

The constitutional revision of July 23, 2008 provided these bodies with a constitutional status by setting up in each assembly a Committee in Charge of European Affairs (article 88-4 of the Constitution). Taking this change into account, article 151-1 of the Rules of Procedure of the National Assembly in its wording resulting from the motion of May 27, 2009 set up a European Affairs Committee whose operation is close to that of a standing committee but whose missions, set down by law, are quite unusual.

I. – THE EUROPEAN AFFAIRS COMMITTEE – THE EUROPEAN "WATCHDOG" OF THE NATIONAL ASSEMBLY

1. – THE COMPOSITION OF THE EUROPEAN AFFAIRS COMMITTEE

The rules of the constitution and the operation of the European Affairs Committee, laid down by article 151-1 of the Rules of Procedure of the National Assembly, are very close to those of standing committees, with the exception of the four particularities which one finds in the vast majority of European affairs committees of the member states of the European Union:

– The number of its members is quite limited. Whilst the standing committees each have 73 members, the Rules of Procedure set the number of members of the European Affairs Committee at 48;

– Its members also belong to another standing committee. This is referred to as the principle of double-membership and its aim is to spread awareness of European issues throughout parliamentary work. In this way, the Rules of Procedure provide that the members be appointed in such a way as to ensure not only, as for every standing committee, a proportional representation of all political groups but also a balanced representation of all standing committees;

– Its members are appointed for the entire term of the Parliament. This specificity is linked to the very rhythm of the passing of European acts which is slower than that of national laws;

– The Committee may invite the French members of the European Parliament to take part in its work, with a consultative voice.

For everything else – the make-up of the *bureau* (a chairman, four deputy chairmen and four secretaries), invitations to speak, votes, hearings of members of the Government – the organization is the same as for standing committees. Thus the chairman of the Committee takes part in the Conference of Presidents.

2. – THE DAILY WORKING OF THE EUROPEAN AFFAIRS COMMITTEE

When the House is sitting, the European Affairs Committee usually meets once or twice a week, usually on Tuesday and Wednesday afternoons (Wednesday morning is given over to meetings of the standing committees). The subjects of these meetings can vary: they can concern the interviewing of a minister, of a European commissioner or of a well-known figure. Alternatively, they can deal with the examination of information reports, of European acts, draft European resolutions, draft opinions on subsidiarity, etc.

These meetings may be open to French M.E.P.s or to other M.E.P.s. They are very often open to the press and the general public. Sometimes the Committee meets jointly with one or several standing committees (31 such meetings took place during the XIIIth term of Parliament), with the European Affairs Committee of the Senate (14 meetings) or with the Foreign Affairs

Committee of another Member State (18 meetings) or even with a specialized committee of the European Parliament (1 meeting). In addition, the European Affairs Committees of the National Assembly and the Senate have set up, since 2010, regular meetings with French Members of the European Parliament so as to discuss the major texts on the European Union agenda (8 meetings).

II. – AN INFORMATION AND MONITORING MANDATE CONCERNING EUROPEAN AFFAIRS

The main task of the European Affairs Committee is to follow all the work of the European Union in order to inform the National Assembly particularly through the publication of information reports, to ensure the prior examination of all draft resolutions which deal both with the content of European drafts and also with their compatibility with the principle of subsidiarity, as well as to inform the Government of its position on draft European acts.

1. – INFORMING M.P.S

a) A Broad Range of Sources of Information

To fulfil its role of shedding light on European work, the European Affairs Committee has, at its disposal, several sources of information.

First of all, it is the responsibility of the Government, since the entry into force of Law n° 2009-689 of June 15, 2009, to communicate, of its own initiative or upon the request of the chairman of the European Affairs Committee, all "necessary documents". No further precision is made. This goes far beyond the "*drafts of or proposals for acts of the European Union*" which article 88-4 of the Constitution requires the Government to submit to Parliament upon their reception at the Council of the Union.

Thus the European Affairs Committee receives all documents which originate with the European institutions (drafts and proposals for Community instruments, White Papers, Green Papers, papers from the Commission, work programmes, reports etc.). Thanks to the development of the Internet and to the policy of openness implemented by the European Commission, the French Parliament can now be informed, in real time, of European draft legislation. The national Parliaments can now obtain, for themselves, all necessary documentation both rapidly and efficiently. This allows, in addition, every French M.P. to table a European draft resolution which may in fact since 2008, deal with "*any document issuing from an institution of the European Union*".

The European Affairs Committee also carries out numerous and regular interviews, in particular with members of the Government and with eminent European personalities. It is thus that the Minister or the Delegate Minister in Charge of European Affairs generally appears before the Committee after each European Council. Other ministers also appear depending on the current European situation. In addition, the Committee endeavours to organize

interviews with main actors in the world of economics and social issues as well as M.P.s from other Member States or from countries which are candidates for accession.

b) A Broad Range of Means to Transmit the Work of the Committee

In addition to the publication of minutes of meetings, M.P.s are mainly informed through the publication of information reports. The Committee may examine the subjects of its choosing and this leads it to publish around thirty information reports every year of which certain contain comparative information on legislation applicable in the countries of the Union. Each of these is submitted to the Committee and may lead to the adoption of conclusions expressing the position of the Committee on a particular subject, or even to the passing of a draft resolution.

This work is easily accessed thanks to the existence of a specific section given over to the European Union, on the Internet site of the National Assembly. This page provides information on the make-up and the working of the Committee (presentation of the Committee, biographies of its members and even the procedures to be followed in the examination of European instruments) and provides on-line access to all the information reports, resolutions and to all the minutes of meetings as well as to current affairs files, comparative legislation studies and documentary resources on European construction. At the same time, a multimedia portal (*Euromedia Space*) which is accessible to all M.P.s, makes a broad selection of sites on European current affairs available.

c) Participation of the Committee in debates in Plenary Sitting

The European Affairs Committee also takes part, thanks to the speeches of its chairman, or one or several of its members, in the plenary sittings of the National Assembly given over to European issues.

Thus, since January 2003, a debate in plenary sitting is systematically held before every meeting of the European Council. Going even further, article 48 of the Rules of Procedure of the National Assembly in its wording resulting from the motion of May 27, 2009, provides that one sitting during the week of sittings out of four which is given over to the monitoring of Government action and the assessment of public policies, shall give priority to European questions.

2. – THE ROLE OF THE COMMITTEE IN FOLLOWING THE WORK OF THE EUROPEAN UNION

a) The Committee Systematically Follows all Draft European Acts

The European Affairs Committee carries out, first of all, an examination of all drafts of or proposals for European acts which the Government submits to Parliament in accordance with article 88-4 of the Constitution (see article 151-2 of the Rules of Procedure of the National Assembly). The body of documents so examined has considerably increased over the years of the construction of the

European Union. Thus, upon its introduction in 1992, article 88-4 of the Constitution obliged the Government to transmit only those drafts of or proposals for acts of the European Communities and the European Union containing provisions of a statutory nature. In 1999 as part of the ratification process of the Amsterdam Treaty, a new possibility was granted to Government to lay before the assemblies European texts which, though not statutory in character, can be considered likely to give rise to Parliament taking a position. To complete this process, the constitutional revision of July 23, 2008 extended the range of texts which had to be put before the assemblies by the Government to all drafts of, or proposals for, acts of the European Communities and the European Union transmitted to the Council of the European Union.

Thus around 1000 instruments are referred to the European Affairs Committee every year.

Texts deemed of minor importance or that do not involve any specific difficulty may be tacitly approved.

The other texts are presented orally by the Chairman of the Committee or a specially appointed *rapporteur* who states the content and the explanatory memorandum of the draft European instrument, any feedback, compliance with the subsidiarity principle, legal basis adopted as well as the probable schedule for its examination. The examination sheets of all the E documents are regularly published as part of the Committee's 'balai' or 'omnibus' (i.e. bringing together diverse documents) reports (information reports on texts laid before the National Assembly in application of Article 88-4 of the Constitution).

As regards each of the texts which it so examines, the European Affairs Committee can decide:

– To approve the draft of or the proposal for a Community instrument;

– To defer taking a decision when it feels it lacks information to assess the scope of the text and it may possibly appoint an information *rapporteur* tasked with addressing in greater depth the examination of the document;

– To oppose the adoption of the draft of or the proposal for a Community instrument.

Its decision may be accompanied by:

– The adoption of conclusions (text of a political character expressing the Committee's point of view);

– The adoption of a draft resolution which, as it expresses a position of the National Assembly, in application of article 88-4 of the Constitution, will be communicated to one of the eight standing committees.

In order to have the time to examine all these documents, Parliament may implement a procedure called "parliamentary scrutiny reserve" This means that the National Assembly and the Senate are entitled to vote – for or against – a

proposal for an instrument before its adoption by the Council of Ministers of the European Union. It lays down that the Government, before making any pronouncement within the Council of the Union, must check that Parliament has not announced its intention of taking a position on a proposal for a European instrument by granting it, for this purpose, a minimum period of eight weeks beginning upon their transmission in the case of draft legislative instruments and four weeks in the case of other draft instruments. These time periods are part of the eight-week interval, laid down by the protocol on the role of national parliaments, appended to the Lisbon Treaty, during which the Council of the Union cannot adopt a common position or a decision with respect to a legislative proposal received from the Commission.

There is however an emergency examination procedure which allows the Government to ask the Chairman of the European Affairs Committee to reach a decision on a draft European instrument, without convening the Committee, when the European schedule requires the urgent adoption of a text.

b) The Committee Plays a Pivotal Role in the Consideration of the Draft European Resolutions of the National Assembly

The European Affairs Committee examines all draft European resolutions which may, in accordance with article 88-4 of the Constitution, deal not only with draft European acts which must be laid before Parliament by the Government but also with any document of whatever nature issuing from an institution of the European Union.

The right to table a resolution is not the sole prerogative of the European Affairs Committee but is also enjoyed by every M.P. Such resolutions which do not issue from the Committee are nonetheless referred to it for its prior consideration. It must, when the Government, the chairman of a group or the chairman of a standing committee so request, table its report within one month following this request.

One of the eight standing committees of the National Assembly, called the lead committee, then examines the text adopted by the European Affairs Committee or, if the latter has rejected it, the initial draft resolution. The standing committee may adopt the text as it stands, amend it or reject it. Nonetheless, since the reform of the Rules of Procedure of the National Assembly in 2009, the draft resolution is considered tacitly approved if the standing committee does not express its opinion within the month following the tabling of the report by the European Affairs Committee.

Within fifteen days of the publication by electronic means by the standing committee of the adopted or taken-as-adopted text, the draft resolution can be included on the agenda of the National Assembly, upon the request of a group chairman, a committee chairman, the chairman of a committee or the Government. If no request for inclusion on the agenda is made or if the Conference of Presidents rejects this request or makes no decision on it, the text

adopted or taken-as-adopted by the lead committee is considered final. It is transmitted to the Government and published in the *Journal officiel* ('Laws and Decrees' edition).

The resolutions are then transmitted to the Government and the General Secretariat for European Affairs (SGAE) begins the inter-ministerial examination. While, legally speaking, the Government is not bound by the resolutions, it is clear that any position taken by the National Assembly on a particular issue will have a political impact and that the Government will take it into account during the negotiations. In practice, many of the resolutions support the position defended by the Executive and even reinforce it, rather than contradict it.

c) Active Involvement in the Monitoring of Subsidiarity

The mechanism for the adoption of resolutions providing a reasoned opinion on the conformity of a European Act with the principle of subsidiarity, provided for in articles 151-9 and 151-10 of the Rules of Procedure of the National Assembly, is identical to that for European resolutions laid down in article 88-4 of the Constitution. The time limits for examination set for the European Affairs Committee and for the standing committees are however reduced so as to allow the National Assembly to express an opinion within the eight weeks provided to national Parliaments in order to give their view.

The European Affairs Committee, in addition to carrying out a prior examination of draft resolutions initiated by M.P.s, also thus systematically monitors the conformity of regulations and directives to the principle of subsidiarity by taking the initiative itself, when it feels it appropriate, of tabling draft resolutions.

Thus, since September 1, 2006, upon the request of the President of the European Commission, in the framework of a trial period for this procedure, between September 1, 2006 and December 1, 2009, the European Affairs Committee examined six instruments concerning their subsidiarity and proportionality. It adopted two reasoned opinions which were approved by the relevant standing committees and which were considered-as-adopted by the National Assembly. Since the coming into effect of the Lisbon Treaty on December 1, 2009, the European Affairs Committee has examined three draft legislative instruments in the context of the monitoring of subsidiarity and has tabled two resolutions containing reasoned opinions which then became definitive.

An identical procedure providing the European Affairs Committee with a central role governs the adoption of resolutions aimed at introducing proceedings, in the two months following the publication of the relevant acts, before the Court of Justice of the European Union for violation of the principle of subsidiarity.

3. – A European perspective on national Government and members' bills

In order to take the European context and the experience of other member states into account in French law-making, Article 151-1-1 of the Rules of Procedure of the National Assembly, in the wording resulting from the text passed on May 27, 2009, provides that the European Affairs Committee may give a European perspective during the examination of national Government or Members' bills dealing with an area covered by the activity of the European Union. It can do this by presenting observations, on the one hand, to the lead committee for the Government or Member's bill and on the other hand, in plenary sitting when the Conference of Presidents invites it to do so. This possibility has been used twice since its introduction.

III. – BETTER LINKS BETWEEN NATIONAL PARLIAMENTS IN THE EUROPEAN DECISION-MAKING PROCESS

Inter-parliamentary cooperation represents an important aspect of the activities of the European Affairs Committee which maintains permanent contacts with the Parliaments of the Union and of candidate countries.

1. – The increase in inter-parliamentary cooperation

As national parliaments are becoming involved in European affairs, so cooperation is strengthening between national and European parliamentary institutions. Thus during the French presidency of the Council of the European Union in the second half of 2008, twelve meetings brought together the representatives of the 27 Parliaments and of the European Parliament on major issues on the agenda of the European Union (meetings of the chairmen of the standing committees of the 27, Conference of Community and European Affairs Committees of Parliaments of the European Union – COSAC –, joint parliamentary meetings on the initiative of the European Parliament).

At the same time, the European Affairs Committee takes part regularly in joint meetings with its counterparts from the 27. Thus it hosted in Paris, in the framework of the preparation of the French presidency of the European Union, 14 European Affairs Committees from the member states of the Union.

In addition, the Assembly is keen to encourage specific dialogue on the major texts which are on the agenda of the European Union. It was in particular the first European Affairs Committee to organize a visio-conference with a standing committee of the European Parliament on a draft directive on January 24, 2010.

2. – Participation in the Conference of Community and European Affairs Committees (COSAC)

COSAC is an inter-parliamentary conference created in 1989 upon the initiative of Laurent Fabius, then President of the National Assembly. It brings

together every six months, in the country holding the European Union presidency, six representatives of the committees tasked with European affairs at the Union's parliaments and six European Parliament representatives. COSAC meetings allow parliamentarians to question the European Union Presidency-in-Office and adopt political contributions on European subjects. COSAC, which saw its existence enshrined in the protocol on the role of national parliaments appended to the Amsterdam Treaty, is also empowered to examine any legislative proposal or initiative in relation to the establishment of any area of freedom, security and justice which might have a direct bearing on the rights and freedoms of individuals.

COSAC contributions are transmitted to the European institutions, i.e. to the Council of Ministers, European Parliament and Commission.

File n° 58

The International Activities of the National Assembly

Key Points

At the outset, international relations were an area in which the leeway for action of the National Assembly had certain limits. The Assembly has nonetheless gradually become more and more involved in this field to the extent that some people do not hesitate today to use the debatable concept of "parliamentary diplomacy". However one may certainly talk nowadays of the international activities of Parliaments.

In this field, the President of the National Assembly plays a central part and the *Bureau*, standing committees and friendship groups play the roles of the other actors in the international activity of the Assembly.

Alongside the classical activities of Parliament in the international field (passing of laws authorizing the ratification of treaties, monitoring of the Government's foreign policy, approval of the State budget for international action), the National Assembly has developed a variety of other activities: establishment of relations with other Parliaments, implementation of inter-parliamentary cooperation programmes, involvement in the work of international parliamentary assemblies and involvement in election observation missions.

☞ *See also files 42, 47, 59, 60, 61 and 73*

I.– PARLIAMENT AND INTERNATIONAL RELATIONS : A DELICATE COUPLING

The question has always been asked, right from the beginning of French parliamentary history, as to whether Parliament could be an actor in foreign policy. By setting up a committee "tasked with being aware of the treaties and external relations of France in order to inform the Assembly", the assemblies of the Revolution gave a first answer to this question without dismissing two basic objections: the risk of treading on the powers of the Executive and that of bringing to light matters which often bore the stamp of confidentiality. This conundrum was summed up by Eugène Pierre, the Secretary General of the Chamber of Deputies, at the very beginning of the 20th Century, in his treatise on electoral and parliamentary political law, written in 1902: "negotiating cannot be

in the hands of the many and matters which deal with the relations of a people and its neighbours cannot be handled in the uproar of a deliberative assembly...true principles require a Government to have its hands unshackled for all diplomatic negotiations but it must never commit its signature, which is that of the Nation, definitively, without the prior assent of the representatives of the Nation".

It is certainly true that diplomacy is, in essence, a kingly function, but it is also the case that Parliament has gradually entered this field to the extent that the concept of "parliamentary diplomacy" was born.

This is indeed an ambiguous and deceptive notion as it appears to imply that an autonomous or parallel diplomacy may develop within Parliament. However its success is witness in reality to the growing role played by international action in the activities of the Assembly. In fact, the international action of Parliament is bound up in the continuity of state diplomacy. It is a complement to such diplomacy and M.P.s are often the promoters or the authorities tasked with presenting it.

A combination of several factors can explain this development:

– European construction has gradually blurred the separation between internal and external affairs;

– The phenomenon of globalization has shown that problems encountered in many areas (the environment, health, transport, telecommunications, migratory movements etc.) go far beyond the national scale;

– Decolonization and the democratization of the countries of central and eastern Europe has had the consequence of strongly increasing the requests for inter-parliamentary cooperation;

– The greater participation of "civil society" in public affairs, including those dealing with the international stage, has obliged Parliaments to become more involved in the field of international relations so as not to leave the way totally free to NGOs, whose legitimacy can never equal that of elected assemblies.

II. – THE ACTORS OF THE INTERNATIONAL ACTIVITY OF THE NATIONAL ASSEMBLY

1.– THE PRESIDENT OF THE NATIONAL ASSEMBLY

The President of the National Assembly is one of the most important political figures of the Republic. He meets with a very large number of foreign guests in his residence at the *Hôtel de Lassay*: Heads of State or of Government officially invited by the Republic, presidents of parliamentary assemblies of foreign countries, leaders of international organizations, ambassadors posted to Paris, emblematic opponents of certain regimes, etc. For example, in 2011, the

President of the National Assembly granted meetings to ten presidents of parliamentary assemblies, fourteen Heads of State or of Government and nine other eminent personalities.

The President may even invite certain guests to take the floor in the Chamber (this privilege is reserved to Heads of State or of Government, the Secretary General of the United Nations and to the President of the European Commission). However up until 1993 (with the notable exception of U.S. President Woodrow Wilson in 1919) it was not a parliamentary custom for a foreign Head of State to speak at the rostrum in the National Assembly. However Mr. Philippe Séguin, then President of the National Assembly, with the agreement of the *Bureau*, brought a real sea-change that year by inviting the King of Spain to deliver a speech in the Chamber. He was followed, among others, by the U.S. President Bill Clinton, King Hassan II of Morocco, the British Prime Minister Tony Blair, the Secretary General of the United Nations Kofi Annan, the German Chancellor Gerhard Schröder, the Algerian President Abdelaziz Bouteflika, the President of the Spanish Council Jose Luis Zapatero, and the President of the European Commission Jose Manuel Barroso and more recently, the President of the Tunisian Republic, Mr. Moncef Marzouki. To this day, 17 eminent foreign personalities have thus spoken at the rostrum of the National Assembly.

The President of the National Assembly may also be tasked with representing the President of the Republic at foreign ceremonies or with leading diplomatic missions in his name. In 1992, for instance, the President of the National Assembly thus brought a message to Japan to clear up the misunderstanding created by the words of the then Prime Minister. Similarly, in 1995, the President of the National Assembly, upon the request of the President of the Republic, visited Algeria so as to help to put an end to the blocking of relations between the two countries.

He may also, of his own accord, launch important initiatives in the area of international relations such as the leading of missions abroad. In 2009, for instance, the President of the National Assembly held a meeting with the President of the People's Republic of China while on a visit to China. He signed an inter-parliamentary cooperation agreement with the People's National Assembly. The chairmen of political groups of the Assembly take part in certain of these missions (in Turkey in 2005, in the Near East in 2009). Other examples of initiatives could be mentioned: the joint meeting of the Bundestag and the French National Assembly in the Chamber of the Congress at the Château of Versailles in January 2003 or the speech by the President of the National Assembly before the Brazilian Chamber of Deputies in October 2009.

It should, in addition, be noted that, in the field of inter-parliamentary relations, the President of the National Assembly automatically chairs several parliamentary delegations to international parliamentary assemblies or associations (the Inter-parliamentary Union, the Parliamentary Assembly of

Francophonie) and in this capacity takes part in the more important sessions of these bodies. He thus opened the XXXVth annual session of the APF which was held in Paris, at his invitation, in July 2009. Furthermore, bodies bringing together presidents of assemblies meet now quite regularly (meeting of the Presidents of the Parliamentary Assemblies of the Member States of the European Union, meeting of the Presidents of the Parliamentary Assemblies of the countries of the G8, meeting of the Presidents of the Assemblies of the member countries of the Euro-Mediterranean dialogue).

2.– THE *BUREAU* OF THE NATIONAL ASSEMBLY

Placed under the authority of a vice-president of the Assembly, a delegation in charge of international relations was set up several years ago within the *Bureau* of the National Assembly.

Its main role is to examine the decisions of the *Bureau* concerning the annual programme of visits and receptions by friendship groups and to approve the cooperation programmes planned with foreign Parliaments.

3.– COMMITTEES

The Foreign Affairs Committee is clearly the central element in the international activities of the Assembly. Its main activities consist of:

- Examining bills authorizing the ratification of treaties and international agreements;
- Interviewing leading French and foreign figures;
- Setting up fact-finding missions on issues dealing with international relations and France's foreign policy (e.g. fact-finding missions have recently been set up on the situation in Myanmar, Iran and the security situation in the countries of the Sahelian area);
- Providing an opinion on the friendship groups and study groups with an international dimension which it is planned to set up.

However the Foreign Affairs Committee does not have a monopoly on international questions. The Finance Committee thus examines the funds provided to "External State Action" missions, "Public Aid for Development" missions and "Loans to Foreign States" missions, the Defence Committee has strategic questions in its remit, the Economic Affairs Committee deals with problems linked to foreign trade and the Law Committee examined in 2006, a law on French immigration/emigration policy.

Furthermore, the European Affairs Committee, in addition to its remit concerning the examination of community instruments, also studies issues dealing with the foreign policy of the Union and those concerning enlargement.

4.– FRIENDSHIP GROUPS AND STUDY GROUPS WITH AN INTERNATIONAL DIMENSION

The friendship groups represent the cornerstone of bilateral inter-parliamentary relations. Their first aim is, in fact, to create links between French and foreign parliamentarians.

These friendship groups interview various figures in Paris: ambassadors representing the country of the "friend" Parliament, diplomats, university professors, journalists and specialists of the geopolitics, economics or culture of the country. They organize missions to their counterpart Parliament and receive foreign parliamentary delegations. They can also serve as a basis for inter-parliamentary or decentralized cooperation programmes.

There are three criteria for the recognition of friendship groups: the existence of a Parliament, the existence of diplomatic relations with France and the membership to the United Nations of the candidate country. Study groups with an international dimension (GEVI) which were introduced in 1981, provide a framework which is adapted to the situation of countries which do not fulfil all the required criteria for the setting-up of a friendship group.

III. – CATEGORIES OF INTERNATIONAL ACTIVITIES AT THE NATIONAL ASSEMBLY

1.– THE CLASSIC ACTIVITIES OF THE NATIONAL ASSEMBLY APPLIED TO FOREIGN POLICY

The National Assembly has gradually entered the field of international questions to the extent that they are no longer considered as a specific area. The Assembly therefore carries out, in this sector, all of its traditional tasks:

- It passes laws authorizing the ratification of treaties;
- It approves the budget concerning the foreign policy of the State;
- It monitors the action of the Executive in this area. It can do this when the Government makes statements on foreign policy issues (the latter may even make the outcome of such a debate a question of confidence, as was the case in 1991 at the time of the first Gulf war), through questions asked by M.P.s, by setting up commissions of inquiry on international subjects (such as that in 2007 dealing with the conditions of the freeing of the Bulgarian nurses and doctor and the recent Franco-Libyan agreement) or through fact-finding missions;
- In addition, since the constitutional revision of 2008, Parliament must provide its authorization for any extension beyond four months of an intervention by French armed forces abroad. In the case of a disagreement with the Senate, the National Assembly has the final say. It may appear paradoxical to present this new provision among the classic tasks of the National Assembly in the field of foreign policy but it must

be underlined that although this is a new prerogative granted to Parliament in France, it is not the case for numerous foreign Parliaments which have already possessed such a power for many years.

2.– THE SPECIFIC INTERNATIONAL ACTIVITIES OF THE NATIONAL ASSEMBLY

There are several of these:

– *The carrying-out of inter-parliamentary relations* which occur either in a bilateral framework through the friendship groups or in the multilateral framework of the Inter-parliamentary Union. The latter was set up in 1889 and today includes Parliaments from over 153 countries;

– *The implementation of inter-parliamentary cooperation* which enables the National Assembly to provide technical aid to Parliaments which request its support;

– *The participation of the National Assembly in the work of international parliamentary assemblies* of which it is a member: the Parliamentary Assembly of the Council of Europe (PACE), the Assembly of the Western European Union (WEU), the Parliamentary Assembly of NATO (PA-NATO), the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (PA-OSCE), the Parliamentary Assembly of Francophonie (APF), the Euro-Mediterranean Parliamentary Assembly (EMPA), the Parliamentary Assembly of the Mediterranean (PAM), or an observer: the Parliamentary Assembly of the Black Sea Economic Cooperation (PABSEC);

– *The participation of the National Assembly in election observation mechanisms.* Nowadays, many elections are, at the request of the authorities of the countries concerned, observed by the international community. As an emblematic institution of democracy, the National Assembly has a natural role to play in the observation process and this is even more the case given that the M.P.s who are members of it, know better than anyone else the wheels of the electoral process.

For the National Assembly to take part in the observation of an election, several criteria must be met:

– The authorities of the country concerned must have made a specific request for such participation either directly to the National Assembly through the French embassy or through various international organizations (the U.N., the European Union, the Council of Europe etc.);

– The elections must be free and subject to the rule of universal suffrage. This implies the respect of the principle “one man, one vote”, the existence of a multi-party system, the existence of a free and independent press and free and equal access to the media. In general these principles

are claimed to exist in all states – one of the aims of the mission is to check the reality of the situation;

– The political importance of the ballot is also taken into account. This is a highly subjective criterion and includes being aware of such notions as the historic or symbolic meaning of the vote, the state of relations with the country in question, the disputed nature of the ballot and the risks of fraud which might be encountered;

– In addition the approval of the Minister of Foreign Affairs must be obtained;

– A guarantee must be given that it will be possible to follow all voting operations without any constraint.

The French National Assembly is more and more often requested to take part in electoral observation missions. Since the beginning of the 1990s, French M.P.s have participated in more than 200 such missions.

File n°59

Inter-parliamentary Cooperation

Key Points

The National Assembly is facing a growing demand for cooperation coming mainly from sub-Saharan Africa, Arab countries, Eastern Europe and Central Asia. .

This cooperation occurs either in a multilateral context (involvement in programmes set up by international donors or after having won tenders called for by the European Union) or in a bilateral context, when the action usually takes the shape of internships or residential seminars organized both in Paris and abroad.

☞ *See also file 58*

Inter-parliamentary cooperation has been, since 1989, one of the main pillars of the international activities of the National Assembly.

I. – GROWING DEMAND

For the National Assembly, inter-parliamentary cooperation consists in providing technical assistance in parliamentary operation for those Parliaments which request aid. It thus contributes to the establishment or the strengthening of the rule of law.

It is reserved solely for the benefit of parliamentarians and parliamentary staff.

The emergence of new democracies in various regions of the world along with the permanent and widespread needs of the Parliaments of the southern hemisphere, has led the assemblies of these countries to turn towards Parliaments possessing longer democratic experience and more substantial operating means.

In this framework, the requests made to the French National Assembly have been more and more frequent. Thus the Assembly now hosts, every year, almost 120 foreign delegations from all the continents. Reciprocally, over 70 programmes led by M.P.s or civil servants of the National Assembly are organized abroad.

The strategy consists in favouring long-term cooperation programmes (multiannual programmes financed either by international donors or by the Ministry of Foreign Affairs and its diplomatic missions or annual regional seminars).

Generally speaking, the aid provided by the National Assembly is usually of a technical rather than of a political nature (this implies that the support usually concerns the Rules of Procedure, the organization of Parliament, its bodies and their work, and less frequently help in the actual legislative work *per se*, i.e. in the drawing-up of a given bill). Similarly this assistance is essentially intellectual as the possibility of providing material support is very strictly limited by the status of the National Assembly (with the exception of the sending of computers which have been replaced and stocks of books to Sub-Saharan African parliaments).

II. – A VARIETY OF ACTIVITIES

1. – MULTILATERAL PROGRAMMES

The National Assembly has been involved in multilateral inter-parliamentary cooperation since 1996 (when the European Commission entrusted it with the leadership of a TACIS project for assistance to the Russian Duma) and as such possesses a proven track record which is recognized by international actors in cooperation and development aid.

Programmes of this type are initiated either by mutual agreements signed with international organizations (United Nations, World Bank, OSCE, USAID) or by answering tenders (European Union).

The National Assembly has thus been entrusted with the leadership of several programmes with various Parliaments (Afghanistan, the Comoros, Lebanon, Burkina Faso, Mali, Niger, Algeria, Morocco, Mauritania, Tunisia, Iraq, Turkmenistan, Moldova etc.) by the United Nations Development Programme (U.N.D.P.).

The National Assembly in addition trains every year UNDP staff members who are in charge of parliamentary affairs and hosts study visits of women parliamentarians from Arab states, in partnership with UNDP.

The National Assembly is also responsible for several long-term programmes originating with the European Union.

It has in recent years led programmes involving the Russian Duma, the Polish Diet and the Parliament of Madagascar; it has also piloted a specific twinning programme with the Romanian Chamber of Deputies and has helped, by means of two successive programmes of the European Union, Kosovo set up its national Parliament (from 2005 to 2008).

The National Assembly also took part, from 2006 to 2008, along with the Ministry of Justice, the National School of Magistrates and the Franco-Vietnamese House of Law, in an institutional support programme in Vietnam. This programme provided, in particular, technical assistance in the modernization of the procedures in use in the Vietnamese National Assembly.

From 2008 to 2010 it piloted, in collaboration with the French Senate and the Hungarian National Assembly, a twinning programme with the Parliament of Moldova.

With the same partners, it has been tasked with institutional twinning with the Albanian Parliament (2012-2013).

The National Assembly is also involved in technical assistance programmes funded by the European Union in order to strengthen parliaments of Libya, Guinea and Lebanon.

2. – BILATERAL PROGRAMMES

a) Programmes Carried Out in France

The National Assembly organizes working visits for foreign parliamentarians and training sessions for parliamentary civil servants. These working visits or trainings maybe of a general nature, or may deal with precise topics concerning both the very heart of parliamentary activity (organization of the plenary sitting, committee work, the legislative procedure, the monitoring of Government action, budgetary procedure, the writing-up of the parliamentary minutes) as well as other important aspects of the work of an assembly (financial management, human resources, library and documentation, archives, protocol, security, information technology and communication). The National Assembly has also set up training programmes on the welcoming procedures to be adopted for new M.P.s at the beginning of a new term of Parliament.

In addition, in many cases, contacts and meetings with the French Senate, the Constitutional Council, the *Conseil d'État*, the General Secretariat of the Government and with ministers whose activities might particularly interest them, are arranged for the representatives of foreign Parliaments.

Coupled with all this, every year since 1995, the National Assembly in collaboration with the French Senate has organized in the framework of the "Special International Cycles for Public Administration" which are run by the French National School of Administration, a four weeks training programme on the organization of parliamentary work. This programme is open to around thirty French-speaking M.P.s and civil servants from about fifteen countries and the living and travel expenses are paid for by the French Ministry of Foreign Affairs. This programme has the very positive advantage of comparing various national experiences.

Since 2010, a similar cycle in English has also been organized every year with great success.

b) Programmes Carried Out Abroad

Within the framework of cooperation, the National Assembly carries out a variety of different missions:

- Assessment missions concerning the needs of a Parliament seeking support from the National Assembly. These missions usually enable the drawing-up of medium term cooperation programme (Haiti, Central African Republic, Bolivia, Madagascar, Lebanon, Mali, Guinea, Ivory Coast, Cambodia, Myanmar, Tunisia, Comoros Islands, etc.);
- Technical assistance missions. These missions consist of sending one or several civil servants to a foreign Parliament with the aim of providing help or advice in the solving of pre-identified problems;
- Information/training missions which are carried out by French parliamentarians or civil servants for the benefit of foreign parliamentarians or civil servants. These missions may be in the form of bilateral seminars for the M.P.s or civil servants of a particular Parliament. The National Assembly also organizes regional seminars for the civil servants of several Parliaments. Thus, every year since 1996, for instance, the National Assembly, along with the French Ministry of Foreign Affairs, has organized a seminar for the civil servants of the Parliaments of Sub-Saharan Africa and since 1995 a seminar for their colleagues of North African Parliaments and Lebanon. UNDP has become an active partner in the Sub-Saharan seminar since 2011.

III. – A SPECIALIZED ADMINISTRATIVE STRUCTURE

Within the International Affairs and Defence Department of the National Assembly, a unit is specifically tasked with inter-parliamentary cooperation.

This unit, which acts under the authority of the President of the National Assembly and of the delegation of the *Bureau* of the Assembly in charge of international activities, attempts to provide a quick and custom-made reply to the needs expressed by the Parliaments which seek its assistance. To reach this objective the Inter-parliamentary Cooperation Unit calls upon the know-how of all the civil servants of the National Assembly and invites M.P.s to participate as much as possible.

File n°60

Friendship Groups

Key Points

The friendship groups of the National Assembly bring together M.P.s who have a specific interest in a particular foreign country. Their first aim is to establish links between French and foreign parliamentarians, but they also play a role in France's foreign policy and in the international influence of the National Assembly.

They must be officially recognized by the *Bureau* of the National Assembly and must also meet certain conditions. When it is not possible to set up a friendship group with a State which is internationally recognized, the *Bureau* may consent to the creation of an international study group which has exactly the same administrative and financial means.

The main activity of the friendship groups is the setting-up of visits to the partner Parliament and the hosting of foreign parliamentary delegations. Such activities must be authorized in advance by the *Bureau* of the National Assembly, which establishes their annual programme. The friendship groups may also receive ambassadors or other personalities from the partner country as well as French figures engaged in cooperation activities with this country. The friendship groups may also act as a base for decentralized or inter-parliamentary cooperation activities.

☞ *See also file 58*

I. – ROLE AND MEANS OF THE OFFICIALLY RECOGNIZED GROUPS

1. – ROLE

The first role of a friendship group is, as its name suggests, to create a network of personal links between French parliamentarians, their foreign counterparts and the main actors in the political, economic, social and cultural life of the country in question.

In carrying out these activities, the friendship groups provide a parliamentary dimension to traditional diplomatic relations. The trips they make and the visits they host, as well as the hearings, may also contribute to relaunching or to enriching the relations with the country in question. The practice which has consisted for successive Presidents of the Republic, of inviting the chairman or chairmen of the friendship groups to the country or

countries concerned, clearly illustrates the importance given to this form of inter-parliamentary exchange in bilateral relations.

In addition, friendship groups play a role of increasing importance in the international relations policy of the National Assembly. Thus they may take part in the hosting of high-ranking foreign VIPs or in the organization of international symposiums. Friendship groups are also, more and more frequently, asked to act as a base for inter-parliamentary cooperation programmes carried out by the National Assembly for the benefit of foreign Parliaments.

In practice the only thing which distinguishes an international study group from a friendship group is the name, as they are both subject to the same rules and benefit from the same funds as the friendship groups. The friendship groups and the international study groups together make up the category referred to as 'officially recognized groups', as their setting-up is subject to the consent of the *Bureau* of the National Assembly.

2. – MEANS

Each officially recognized group has an administrative secretary who is appointed from among the civil servants of the National Assembly, and who has expressed his voluntary agreement to take on such a task in addition to his/her normal administrative work. The role of the administrative secretary is to assist the chairman in all aspects of the running of the group. He/she is in charge, in particular, of the concrete organization of the group's activities (including hosting visits and travelling). He/she writes up the minutes.

Each officially recognized group is also provided with financial means. Each year this funding enables the financing, within the limits of the rules set out below, of trips and hosting costs agreed to in advance by the *Bureau* upon the proposal of its International Activities Delegation, as well as of receptions in honour of ambassadors or foreign personalities.

II. – RULES FOR OFFICIAL RECOGNITION

It is necessary to distinguish between the criteria in use and the procedure being followed.

1. – CRITERIA FOR OFFICIAL RECOGNITION

Since 1981, three criteria have been laid down for the official recognition of friendship groups:

- Existence of a Parliament;
- Existence of diplomatic relations with France;
- Membership of the country to the U.N. It must, however, be taken into account that absence of the final criterion has not prohibited the setting-up of friendship groups with certain countries (such as Switzerland,

which only became a member of the U.N. in 2002) and that it is traditional for a France-Quebec friendship group to be recognized.

The concept of international study groups (GEVI) was set up in 1981 to provide a framework to fit the status of countries which did not fulfil at least one of the three conditions of principle to permit the establishment of a friendship group. Even if there are several long-standing friendship groups which do not fulfil these three conditions, the idea of the GEVI is a useful way to express a change in the way these countries are considered in the light of developments taking place there. The title of GEVI is only given to groups linked to sovereign states which are internationally recognized. There are only two exceptions to this rule: the GEVI on Taiwan and that on the Autonomous Palestinian Territories.

2. – PROCEDURES FOR OFFICIAL RECOGNITION

The rules set down by the *Bureau* concerning official recognition are the following:

No friendship group can be set up without the prior consent of the *Bureau*;

At its first meeting (*see below*) the delegation examines the list of friendship groups which were officially recognized during the previous Parliament and proposes its renewal, with or without modifications and the *Bureau* rules on this proposal.

The delegation then examines the requests for official recognition which were made during the Parliament by the M.P.s and refers the matter for advice, if it judges it necessary, to the Foreign Affairs Committee. When dealing with a new international study group, the referral to the Foreign Affairs Committee is obligatory and its advice is always followed.

III. – PROCEDURE FOR THE SETTING-UP OF FRIENDSHIP GROUPS AT THE BEGINNING OF A NEW TERM OF PARLIAMENT

The successive stages of this procedure are the following:

– At its first meeting of the new term of office, the International Activities Delegation of the *Bureau* confirms the rules applicable to officially recognized groups, draws up the list of such groups (beginning with those recognized during the previous term of office) and carries out, according to the rule of the greatest remainder formula of proportional representation, the numerical distribution of the chairmanships between the political groups. There are four large geographical areas (Europe, Africa, the Americas and Asia-Oceania);

– The representatives of the political groups are then convened by the Chairman of the delegation and they carry out the distribution of the chairmanships, country by country;

– In reply to a request made by the Chairman of the delegation, the political groups transmit the names of their members holding the chairmanships which have been attributed to their group. It should be made clear that an M.P. may only hold the chairmanship of one friendship group;

– The M.P.s are then requested to make known the officially recognized groups to which they wish to belong;

– The chairmen of the officially recognized groups then receive a list of the members of their group. It is then their responsibility, with the help of the administrative secretary who has been appointed to their group, to convene the opening meeting.

IV. – APPOINTMENT OF THE *BUREAU* MEMBERS OF THE OFFICIALLY RECOGNIZED GROUPS

The *bureau* of a friendship group includes, in addition to the chairman, several deputy chairmen and several parliamentary secretaries.

The number of deputy chairmen is decided by both the total number of members of the friendship group and by the numbers in the political groups in the National Assembly. If the number of members of such political groups goes beyond a certain threshold, then the group is entitled to additional deputy chairmen.

However the number of parliamentary secretaries, usually between 6 and 10, depends entirely on the number of members in the friendship group.

An M.P. may only hold one chairmanship and a maximum of deputy chairmanships of officially recognized groups which varies according to the size of his political group. The ceiling for this limit is higher for the members of groups whose number is below a certain threshold.

V. – PRESENTATION OF THE ACTIVITIES OF THE OFFICIALLY RECOGNIZED GROUPS AND THE RULES WHICH GOVERN THEM

The following is an overall presentation of the main types of activity carried out by the officially recognized groups and the rules which govern them.

1. – VISITS PAID AND RECEIVED

The core activities carried out by the officially recognized groups are made up of visits to the countries in question and the hosting of delegations from the partner Parliament. Such activities are expensive and as such, they are regulated by rules drawn up by the *Bureau* and confirmed at the beginning of each Parliament:

– The number of visits paid and received is limited to a single exchange (one visit paid and one received) per group during the same term of Parliament, except for countries bordering France. In practice, the real number of visits paid and received takes into account the resources available.

– The number of M.P.s who can travel is also limited (during the XIIIth term of Parliament it was 7 in Europe and 6 outside of Europe with this number being reduced further to 4 for visits to far-off countries). The same limits apply to the numbers in delegations hosted in France. For these trips, a pre-established distribution of places between the political groups, is decided upon by the *Bureau*.

– The expenses incurred during the visits and the hosting are divided up between the National Assembly and the partner parliament according to the following rule: the visiting delegation pays for the travel costs necessary to get to the host country which, in turn, looks after all expenses during the stay. It is, nonetheless, possible, when the rules applied by the partner Parliament make it necessary, to follow another system of financing. In this case the Parliament of the visiting delegation covers all the expenses relating to the trip.

– All requests either to make or receive a visit must be approved by the International Activities Delegation and then, by the *Bureau*. In practice, the chairmen of the friendship groups and of the GEVI are asked, at the end of the year, to make their wishes known. Before requesting permission for a trip, the group must be sure that the partner Parliament is prepared to receive it and, where necessary, to cover the corresponding expenses. The requests must also follow a rule of alternation between visits paid and received. The delegation draws up a draft programme of visits to be paid and received and particularly takes into account, the last exchanges carried out, the level of activity within the group and the context of the diplomatic and parliamentary relations with the country in question.

– The visits hosted in France are usually divided into two parts over a period of three to six days. The first part takes place in Paris where parliamentary and ministerial political meetings are organized, and is usually followed by a second part, outside of Paris, very often in the constituency of the chairman or the deputy chairman, who use it as a way to have the main achievements of their region highlighted. These programmes always attempt to take into account the wishes of the visiting delegations, as well as the context of the economic and cultural relations with the country in question.

– The programmes for the visits by French M.P.s abroad are also based on the same broad principles. Nonetheless, there are two major exceptions:

exchanges with Germany and the United Kingdom. These two exchanges, which take place every year and are usually limited to two or three days, are mainly given over to working meetings on one or more themes of common interest which have been decided upon in advance.

– Reports are published concerning trips abroad by French friendship groups, in the collection called “Information Documents of the National Assembly”.

In addition, the chairman of officially recognized groups can request expenses to cover receptions (notably lunches or dinners) organized in honour of personalities playing an eminent role in the relations between France and the country concerned (notably ambassadors, parliamentarians, members of the executive from the country who are visiting France).

2. – MEETINGS AND VARIOUS CONTACTS WITH FOREIGN OR FRENCH PERSONALITIES

Meetings with ambassadors, diplomats from the French Foreign Ministry, French or foreign specialists on the country in question, as well as the leaders of associations active in the country, can all help to improve the knowledge of the members of the group and contribute to binding the links between France and the country in question more closely.

3. – PARTICIPATION IN THE POLICY OF INTER-PARLIAMENTARY COOPERATION

The chairmen of the friendship groups, who are in a good position, by their very office, to understand the needs of the partner Parliaments, can initiate cooperation activities to be carried out by the National Assembly. Whatever happens, they are systematically invited to participate in such activities, whether they be multilateral or bilateral. These could include receptions for foreign M.P.s or parliamentary civil servants who are visiting Paris or participation in training or information missions carried out in a foreign Parliament.

4. – DECENTRALIZED COOPERATION

Friendship groups may wish to give a territorial dimension to the links created with the partner country and this can lead them to encourage the setting-up of relations between local communities and authorities. This type of decentralized cooperation can in particular take the form of twinning between towns of similar sizes.

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* *

This list of the activities of the officially recognized groups is certainly not exhaustive. The chairmen may take whatever initiative they feel appropriate to carry out the objectives of the group. In the countries in question, the area of the promotion of the French language may also be one which is particularly supported by the friendship groups.

File n°61

The Participation of the National Assembly in International Institutions

Key Points

The National Assembly participates in the work of several international parliamentary assemblies.

To do so, it sets up delegations, mostly made up of M.P.s and Senators, which are provided with an administrative secretariat which is serviced by parliamentary civil servants and funded by financing allotted by the *Questeurs.* This funding enables the delegations to finance the involvement of their members in the work of the international parliamentary assembly.

☞ *See also file 58*

I. – INTERNATIONAL PARLIAMENTARY ASSEMBLIES OR GATHERINGS ON A WORLD SCALE OR WITH A SPECIFIC THEME

1. – THE INTER-PARLIAMENTARY UNION (IPU)

The Inter-parliamentary Union was set up in 1889 by a French M.P. and a member of the British House of Commons.

It was the first international institution founded with the aim of encouraging international initiatives in favour of the preservation of peace and the pacific resolution of conflict. It strongly influenced the movement of ideas which led to the creation of the League of Nations and then the United Nations Organization. Today it is the world organization representing the Parliaments of sovereign states. It has 162 member Parliaments.

The French group of the IPU is made up of 50 M.P.s and 50 Senators. The President of the Senate and the President of the National Assembly are both, jointly, *ex-officio* chairmen of the group. Nonetheless in practice, the group is headed by an Executive President who is appointed by the General Assembly of the group. The Executive President who is elected for the length of the term of Parliament must belong alternately to the National Assembly and then to the Senate and represents the political majority in the National Assembly.

The expenses of the French group (participation of its members in the meetings of the IPU and the financial contribution to the IPU) are funded in equal shares by the National Assembly and the Senate.

The French group represents the French Parliament at the IPU (notably at its two annual plenary conferences). It also is tasked with contributing to the aims of the IPU, i.e. peace and cooperation between peoples and the strengthening of representative institutions.

2. – THE PARLIAMENTARY ASSEMBLY OF FRANCOPHONE COUNTRIES (APF)

The Parliamentary Assembly of Francophone Countries was set up in Luxembourg in 1967 under the name of the International Association of Francophone Parliamentarians. It brings together parliamentarians from 65 member Parliaments or from associated or member inter-parliamentary organizations, and from 18 observer Parliaments.

The French branch of the APF has 150 members, 90 M.P.s and 60 Senators, who are distributed proportionally according to the size of their political groups in each assembly. The chairmen of the friendship groups with French-speaking countries, both in the National Assembly and the Senate, are members by right. The President of the National Assembly is Chairman, by right, of the French branch, which is, in practice, chaired by a Deputy Chairman, whom he appoints from among the M.P.s. The operational costs of the branch are covered equally by the two assemblies, with the National Assembly taking care alone of the expenses linked to the everyday running of the APF (mail, telephone etc.).

The French branch is represented on the different bodies of the APF (*bureau*, committees, AIDS network, female parliamentarian network) and participates annually in the two meetings of the *Bureau*, as well as in the plenary Assembly and in the parliamentary seminars organized by the APF. As the APF is divided up into four geographical regions, the French branch is a member of the European region.

II. – INTERNATIONAL PARLIAMENTARY ASSEMBLIES ON A REGIONAL SCALE

1. – THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE (PACE)

The Parliamentary Assembly of the Council of Europe was the first European assembly in the history of the continent, and is made up of 318 Representatives (and as many substitutes) from 47 countries. It elects the judges of the European Court of Human Rights (ECHR), the Commissioner for Human Rights and the Secretary General of the organization. It proposes candidates for the European Committee for the Prevention of Torture (CPT). It ensures a regular check on the respect by member states of their commitments. It has often initiated and continues to initiate blueprints for conventions, even if formally, the initiative is in the remit of the Committee of Ministers.

The French Delegation to the Parliamentary Assembly of the Council of Europe has 36 members (i.e. 18 Representatives and 18 substitutes). Out of these, 24 are appointed by the National Assembly and 12 by the Senate. The Chairman is elected by the delegation at the beginning of each Parliament. The budget of the delegation is made up of contributions from the two assemblies (two thirds being covered by the National Assembly and one third by the Senate).

The members of the delegation participate in the four annual plenary sessions of PACE which take place in Strasbourg, as well as the meetings of the eight committees. The delegation is also represented at the meetings of the Standing Committee (four per year) and of the *Bureau*.

2. – THE NATO PARLIAMENTARY ASSEMBLY (NATO-PA)

The NATO Parliamentary Assembly brings together delegations of parliamentarians from the 28 member countries of the Atlantic Alliance and from 14 associated parliaments. It has five standing committees and meets twice a year in plenary session. It ensures the link between the legislative assemblies and the international organization so as to facilitate democratic debate on the orientations and the policies being implemented in the framework of the Alliance.

The French delegation has 18 full members (11 M.P.s and 7 Senators) and as many substitutes. Each assembly covers the expenses relating to the travel arrangements of its representatives.

3. – THE PARLIAMENTARY ASSEMBLY OF THE ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE (OSCE-PA)

The Parliamentary Assembly of the Organization for Security and Co-operation in Europe was set up by the Madrid Conference of April 2 and 3, 1991. According to the provisions of its Rules of Procedure, it must fulfil several remits: the assessment of the implementation of the objectives of the organization, the debating of subjects dealt with by the Ministerial Council and the meetings of Heads of State and of Government, the development and promotion of mechanisms for the prevention and resolution of conflict and the strengthening and consolidation of democratic institutions in the member States. It has 320 parliamentarians.

The French delegation has 13 members (8 M.P.s and 5 Senators). Each assembly covers the expenses relating to the travel arrangements of its representatives. It participates in the three annual meetings (the five-day July meeting in a town in a member State, the four-day autumn meeting, given over, amongst other things, to the Mediterranean Forum and the two-day winter session in February, in Vienna) as well as those of the three committees.

4. – THE EURO-MEDITERRANEAN PARLIAMENTARY ASSEMBLY (EMPA)

The Euro-Mediterranean Parliamentary Assembly brings together delegations from the parliaments of the thirty-seven members of the Euro-

Mediterranean partnership which was founded by the Conference of Euro-Mediterranean foreign ministers in Barcelona on November 27-28, 1995. The Assembly which was born after the transformation of the Euro-Mediterranean Parliamentary Forum, created in 1998, held its inaugural session in Athens in March 2004.

It is made up of 240 members equally representing the parliaments of the European Union and those of its partner states in the Mediterranean. The ten partner states (Morocco, Algeria, Tunisia, Egypt, Israel, the Palestinian Authority, Jordan, Lebanon, Syria and Turkey) are represented by 120 members. The national parliaments of the twenty-seven countries of the European Union are represented by 75 members and the European Parliament by 45 members.

The French delegation, which has three members (two M.P.s and one Senator), participates in the two annual plenary sessions and in the meetings of the three committees and working groups which deal with three dimensions of the Euro-Mediterranean partnership: politics, economics and culture.

5. – THE PARLIAMENTARY ASSEMBLY OF THE MEDITERRANEAN (PAM)

The Parliamentary Assembly of the Mediterranean was born from the Conference on Security and Cooperation in the Mediterranean (CSCM) which was a subsidiary body of the Inter-parliamentary Union and which operated from 1992 to 2005. The PAM was formally set up in February 2005 at Nafplio (Greece) by the 4th and final plenary CSCM and it held its inaugural session at Amman in September 2006.

It includes 22 countries, of which 19 border on the Mediterranean and three are assimilated (Jordan, Macedonia [FYROM] and Portugal).

The aim of the PAM is to develop cooperation between its members by dealing with questions of common interest so as to foster confidence between the states of the Mediterranean, to contribute to regional stability and security as well as to encourage harmonious development of the Mediterranean countries in a spirit of partnership.

Each national delegation to the PAM is made up of 5 parliamentarians. By agreement between the Presidents of the two assemblies, it was decided that the seats for the French delegation to the PAM would be made up of 3 M.P.s and 2 Senators. Therefore the contribution to the PAM is paid 3/5 by the National Assembly and 2/5 by the Senate.

6. – THE PARLIAMENTARY ASSEMBLY OF THE BLACK SEA

The National Assembly also participates as an observer in the work of the Parliamentary Assembly of the Black Sea.

File n°62

Communication at the National Assembly

Key Points

Rather than “communication”, it would be better to speak of “communications” at the National Assembly. The National Assembly is, in fact, looked upon by the citizens simultaneously as a historical monument, as an institution of the Republic and as one of the most significant places in French political life. This implies a necessity to use different communication strategies and initiatives.

The communication policy of the National Assembly is laid down by the Communication Delegation of the *Bureau*. It is consists of a variety of activities such as the organization of tours of the *Palais Bourbon*, providing access to parliamentary proceedings and documents as well as to the internet site, organizing events and developing teaching tools for schoolchildren of both primary and secondary level.

There are also, of course, a variety of initiatives carried out in the framework of internal communication.

☞ *See also files 63 to 66 and 74*

On account of its history and role, the National Assembly is looked upon in a number of ways in France. It is, at the same time:

– A monument, with its facade, “the colonnade”, its Chamber and the *Hôtel de Lassay*, the residence of the Presidency, all of which are part of the nation’s heritage;

– A deliberating assembly at the very heart of institutional life and of public powers;

– A political assembly, where, with its political groups based on the political parties, debates take place between the governing majority and the opposition.

The National Assembly is therefore not a single but a multiple entity and it is this manifold nature which requires a series of different communications initiatives.

It is the *Bureau* and its sub-group, the Communication and Press Delegation which lays down the communication policy of the National Assembly. This policy is implemented by a specific Department, which is called the Communication and Multimedia Information Department.

I. – COMMUNICATION OF THE NATIONAL ASSEMBLY AS A HISTORICAL MONUMENT

This first image of the National Assembly entails a whole first set of communications initiatives:

– The National Assembly may be visited. It is the duty of the Communication Department, in particular, to organize such visits and the communication aids which are linked to them. These include educational films, the "Welcome to the Assembly" brochures, specific fact sheets, signs which can be seen all along the routes of the visits and which explain the various places and the working of the National Assembly, as well as the audio-guides which are available in French ,English, German and Spanish. The National Assembly may also be visited virtually by means of the Assembly's website. On top of these "traditional" visits must be added the participation of the National Assembly in the European Heritage Days on the third Saturday and Sunday of September when many public buildings are opened simultaneously to the general public;

– The National Assembly also has a shop called the "*Boutique de l'Assemblée*", where everyone may, in particular, procure documents of the Assembly or a souvenir of their visit;

– This wealth of heritage and history has led to the development of a publishing wing which covers everything from works of reference to works of vulgarization passing through children's books. Its aim is to have the National Assembly better known by the general public. Most of the works are created in partnership with established publishers which ensures that they gain national distribution in the network of bookshops;

– The prestige attached to the premises also means that many exhibitions are often organized there, e.g. on the occasion of the tercentenary of the birth of J.-J. Rousseau. Many events also take place there too (colloquia, political book day, evenings for the promotion of various publications).

II. – COMMUNICATION OF THE NATIONAL ASSEMBLY AS AN INSTITUTION OF THE REPUBLIC

In this framework, every person who is interested in the working and the activities of the National Assembly should be able to access the information he is

seeking. Who is who? Who does what? What is the role of the National Assembly within the institutions?

This information brief relies on different tools, from the most traditional to the most modern, as the digitization of documents enables their transmission, from a single file, in a whole series of ways.

This mandate requires the departments of the National Assembly to inform without taking sides. The taking of sides and the making of commentaries do not fall within their brief but within that of the press or television and radio. The Communication Department however does assist the press, television and radio through its Press Unit. Amongst the television channels, *LCP-Assemblée nationale*, the parliamentary channel, has a very specific role.

This second image of the National Assembly entails another set of communications initiatives:

- Replies to questions asked by mail, telephone or electronic mail;
- Making available by means of the Internet site, all the information concerning the organization and the operation of the Assembly and all the parliamentary proceedings and documents, along with two weekly internet newsletters one giving information on the upcoming work of the Assembly and the other, the "*rétrolettre*" or "backletter" bringing together all the results of work accomplished;
- Information available via Facebook and Twitter;
- Live access to the debates upon request via the video portal of the internet site;
- The recording of all the debates for television and radio. Making them available to public or private television channels;
- The publication of documents on the internet site, summing up, at regular intervals, the work of the National Assembly and its different bodies and in particular the annual activity report;
- Learning tools for schoolchildren in different formats: a cartoon/brochure called, "Visiting the National Assembly", a "teaching kit" provided to M.P.s to illustrate their talks when they visit schools in their constituency, and the organization, in collaboration with the Ministry of Education, of the Children's Parliament which has its own interactive internet site: www.parlementdesenfants.fr.

III. – THE COMMUNICATION OF THE NATIONAL ASSEMBLY AS ONE OF THE MOST IMPORTANT FORUMS IN POLITICAL LIFE

In this particular field, communication, apart from the transcript of the minutes and the broadcasting of debates, is the responsibility of the political groups and the M.P.s themselves.

Each of the political groups has its own organization and carries out its own communication:

– By means of an internet site which can be accessed directly from the National Assembly site;

– Through press conferences, in part, organized by the Press Unit.

Each M.P. may use the National Assembly site to give access to his own site (for which he has the entire editorial responsibility). He can meet the press (in particular in the "*Salle des Quatre Colonnes*" which is situated next to the Chamber and which has always been the tradition meeting place for M.P.s and journalists).

File n°63

Press Relations

Key Points

The Press Unit is in charge of "press relations" at the National Assembly.

It thus manages the reception of journalists, mans the secretariat of the committee in charge of granting permanent press accreditation, grants temporary press accreditations and is in charge of authorizing all requests for filming or reporting.

Its second mission is to inform journalists of the work of the National Assembly. To perform this task, it publishes a weekly "Assembly Calendar", technical files on the bills being debated (called "Focus"), and factual press communiqués which provide information concerning the committee, office or commission meetings open to the press, or concerning the holding of press conferences or various events taking place at the *Palais Bourbon*.

Within the Press and Audiovisual Unit, certain civil servants follow the proceedings of particular bodies and provide the journalists with information concerning their work in progress.

In addition, in order to facilitate the work of the media, the National Assembly provides them with special office space and with pictures of the parliamentary proceedings.

☞ *See also files 62 and 74*

The institutional "press relations" of the National Assembly are handled by the Press and Audiovisual Unit. This unit, which is part of the Communication and Multimedia Information Department, has a staff of around thirty civil servants. It deals both with the reception and accreditation of journalists and the provision of information to the press concerning parliamentary work. It thus acts as a complement to other 'press relations' services of a more political nature, which could be provided by other sources within the National Assembly, in particular the President and the political groups.

I. – RECEPTION AND ACCREDITATION OF JOURNALISTS

The press office carries out the reception of journalists and grants the authorization of access to the premises of the National Assembly. The Press Unit also manages permanent press accreditations and requests for reporting and filming.

1. – RECEPTION

Journalists are received by the Press Office which is situated at the entrance reserved for the press (*33, quai d'Orsay*). By going there or by contacting the Office by telephone or electronic mail, journalists are provided with all the information they require:

- Information concerning the agenda of the National Assembly as well as meetings of committees, missions and delegations;
- Information on press conferences and other meetings open to the press;
- Parliamentary documents (Government or Members' bills, reports etc.) including amendments debated in committee meetings or in plenary sitting;
- Detailed information concerning parliamentary procedure or the daily life of Parliament, obtained, when necessary, through the parliamentary civil servants of the Press Unit.

2. – ACCREDITATIONS

In order to gain access within the *Palais Bourbon* to the places where they can meet and interview M.P.s, as well as to the spaces which are reserved to them (press rooms and press galleries in the Chamber), journalists must hold an accreditation which is provided to them by the National Assembly. They may also have access to the meeting rooms in which proceedings which are open to the press take place (committee hearings most of the time) and where press conferences occur. If they have a prior appointment with an M.P. they may also be allowed to go to his office.

- Permanent accreditations:

Media which regularly cover parliamentary proceedings can be permanently accredited. This accreditation is granted by a committee whose secretariat is manned by the Press Unit and which is composed, in accordance with article 29 of the General Rules of the *Bureau* of the National Assembly, of M.P.s (the Chairman of the Bureau Delegation in Charge of Communication and the Press, *Questeurs*) and representatives of the press: the Chairman and Secretary General of the Association of Parliamentary Journalists, the Director General of the French National Press Federation, the Chairman of the French Federation of Press Agencies, the Chairman of the Foreign Press Association and the Chairman of the Anglo-American Press Association.

This commission examines new requests for accreditation made by the media. Its decisions are based on the following criteria, which have been fixed over time:

– The commission grants permanent accreditation to media organizations and not to individual journalists;

– Accreditation is granted, taking into account the requirements of pluralist coverage, to those media whose publication is regular and whose circulation and broadcasting is wide and whose journalists (who must all possess a press card) regularly follow the proceedings of the National Assembly;

– For foreign press, media accreditation usually depends on their prior recognition by the Foreign Press Association the Anglo-American Press Association (as for the foreign journalists themselves, they must be accredited by the Ministry of Foreign Affairs).

The commission grants an accreditation for an unlimited period. Every year, the Press Unit asks each accredited medium to provide a list of journalists which its editorial board wishes to see accredited and subsequently provides them with an access pass to the National Assembly for one calendar year.

The commission may also withdraw its accreditation from a newspaper or other medium but this procedure is rarely used (and generally only when a newspaper or other medium no longer fulfils the criteria of accreditation).

- Temporary accreditations:

The Press Office may grant, upon request, accreditations to journalists who do not hold permanent accreditations but who wish to access the premises of the National Assembly for a temporary period. In this case, accreditation requires having a professional press card, an official accreditation with the Ministry of Foreign Affairs or an official certificate from the editorial board for non-permanent contributors to a particular medium (free-lances, trainees etc.).

3. – AUTHORIZATIONS FOR FILMING AND REPORTING

Photographers and television crews must be accredited. They can access the National Assembly without undergoing other specific procedures, except in two cases where particular rules governing access are applied:

– When the filming and reporting is due to take place in locations which are not usually open to the press;

– When the photographers or television crews do not belong to the staff of a particular newspaper or other medium and cannot therefore avail of the advantages of journalists – a growing number of programmes broadcast by television channels are made, for example, by production companies;

– Reports or films which fall into these two categories must undergo a special prior authorization procedure carried out by the Press Office and validated, depending on the case, by the President, the *Questeurs* or the administrative authorities of the National Assembly.

II. – INFORMING JOURNALISTS

The Press Unit has a procedure for informing journalists precisely and quickly on the work of the National Assembly. This procedure is twofold: on the one hand, through publications, on the other hand, through specialized information provided by civil servants specifically in charge of press relations.

1. – PUBLICATIONS

a) The future calendar

Each week the Press Unit publishes, in electronic form, the "Assembly Calendar" which brings together in a single document, the internet links to the agenda of the Assembly's sittings, the timetable for meetings of committees, missions and delegations and information concerning meetings open to the press, as well as events organized at and by the National Assembly.

This Calendar is transmitted, by priority, to the press agencies who use it to build up their own weekly and daily timetables. It is also transmitted to any journalist who makes such a request to the Press Unit. It is also published on the National Assembly's internet site in the press section.

b) Following committee work: Focus Files

A "Focus File" is a technical file on a (Government or Members') bill which is published immediately following its examination by the relevant committee and before it goes before the public sitting. This file is only published in an electronic form. It contains, in addition to a reminder of the main provisions of the bill, links to internet sites which might have a connection, as well as the main amendments or principal modifications brought in by the committee.

The "Focus Files" are addressed by electronic mail to journalists registered on a specific list. They are simultaneously included in legislative files on the internet site of the National Assembly.

c) Factual press communiqués

On the contrary of press communiqués which are published by M.P.s or political groups, whose objective is to publicize positions or commentaries on current political affairs, the press communiqués of the Press Unit are purely factual and informative. They are essentially given over to parliamentary work and, for the vast majority, either announce the opening to the press of meetings of committees, missions and delegations or the holding of press conferences by M.P.s with positions within the National Assembly. In addition to this, the Press

Unit publishes communiqués of a similar nature concerning events organized by the National Assembly (the Children's Parliament for example), as well as certain other activities which might take place there (symposiums, exhibitions).

The communiqués are distributed by the Press Unit both within the National Assembly and outside. They are sent first of all to the press agencies working in the *Palais Bourbon* as well as to the parliamentary television channel (*LCP-Assemblée Nationale*). They are also posted in the press rooms. Other journalists, however, receive them by electronic mail.

The Press Unit keeps and updates distribution lists in a variety of different specializations; politics, economics, labour, health, etc. These lists can be permanent and concern a very broad field or they can be temporary and have a very precise goal thus targeting those interested in a very specific piece of parliamentary work. Other lists may concern very different areas such as the list of 'photo agencies' which is used to contact such agencies when events may be covered from a visual point of view or the list of local press contacts, used when the provincial media might be interested in a particular issue. In order to keep these lists up-to-date, the Press Unit has a subscription to press contact databases.

In addition, the communiqués published by the Press Unit are simultaneously placed on-line on the internet site of the National Assembly, in the Press section. They are also available as RSS feeds to be taken up by other internet sites.

2. – SPECIALIZED PARTNERS

One of the main briefs of the Press Unit is to report on meetings of committees, missions and delegations which are, in most cases, not open to the public. In order to do this the civil servants working in the unit are divided up into fields of competence which cover the various remits of the different standing committees. They are thus able to provide journalists with assistance in searching for very specialized information, especially when one takes into account the extreme complexity of some bills.

The remits of the standing committees and of the other parliamentary bodies (European Affairs Committee, Women's Rights Delegation, Assessment and Monitoring Commission, commissions of inquiry, fact-finding missions set up by the Conference of Presidents) are covered by five civil servants (one adviser and four deputy advisers).

Thanks to such a mechanism, journalists can obtain a quick and reliable report of meetings to which they do not have access. In fact, the civil servants of the Press Unit are immediately available at the end of meetings to provide the media with information concerning the debates which have taken place and the amendments which have been examined as well as to answer any questions and to transmit documents meant for distribution (reports, amendments etc.). Afterwards and throughout the period of the parliamentary procedure and the

subsequent implementation of a bill, these same civil servants are available to provide journalists, be they general reporters or more specialized, with the necessary information.

III. – MATERIAL FACILITIES

In keeping with the constitutional duty of maintaining the public nature of parliamentary debates, the press is very much at home in the National Assembly. Thus it is provided with its own offices on the premises. In addition, and in particular on account of recent developments in the television media, the press is granted specific technical facilities concerning the recording and broadcasting of proceedings either in plenary sitting or in committee meetings.

1. – SPECIAL OFFICES RESERVED FOR THE PRESS

Journalists work in different rooms and offices spread over several floors within the *Palais Bourbon* all of which are adjacent to the Chamber. On the first floor, the Empire Room provides a splendid backdrop for the offices of the Chairman and the Secretary General of the Association of Parliamentary Journalists but is also used for interviews. On the second and third floors there are two editorial rooms with the telephone and computer connections necessary for the retransmission of data. Journalists who work regularly at the National Assembly have individual offices there. In addition, there are radio boothes equipped to receive sound from the plenary sitting and linked to the radio stations in order to broadcast live or after editing. Finally, a press conference room is available for M.P.s to present their parliamentary work.

2. – PROVIDING TELEVISED BROADCASTS OF PARLIAMENTARY PROCEEDINGS

All plenary sittings and most meetings of committees, missions and delegations open to the press, are recorded for television by the services of the National Assembly. These pictures are then broadcast on the internal television channel which is available in each M.P.'s office. They are also made available to the Parliamentary Channel (which only broadcasts some of them) and to other television channels for their news or current affairs programmes. To do this, a fibre-optic link carries the pictures from the National Assembly directly to the control rooms of the main French television channels. These pictures, which have no copyright, may also be rebroadcast by other channels, either live or at a later time, as the Press, Television and Radio Unit keep the recordings available for the channels either physically or electronically.

More generally, the pictures of debates are available for the general public on the internet site of the National Assembly both live and upon request on video. Since the autumn of 2009, the Press Unit has been systematically carrying out the indexing and the editing of pictures broadcast via internet. This promises a better access to debates and will allow the downloading of sections of debates chosen by internet users.

File n°64

The Internet site of the National Assembly

Key Points

The internet site of the National Assembly www.assemblee-nationale.fr offers on-line the entire range of parliamentary proceedings (texts of Government and Member's bills, reports, minutes etc.) as well as videos of the plenary sitting or of committee proceedings which can be viewed live or on demand. It also presents a biographical file on each M.P. and his activities.

A home page which is updated in real time presents a selection of the highlights of the week and informs the internet user of the most recent decisions taken by the National Assembly

It is possible to subscribe for free to two weekly electronic newsletters. One of these ("*la lettre d'information hebdomadaire*" or "the Weekly Information Letter") deals with future events and the other ("*la rétrolettre"* or "the Backletter") looks at past events. It is also possible to receive alerts on the latest news concerning precise subjects.

The site and its videos may be consulted in an adapted version using a smartphone (www.assemblee.mobi).

The site also includes general information pages on parliamentary law and on the organization and operation of the institution, as well as on the history and the heritage of the *Palais Bourbon* and the *Hôtel de Lassay*.

Several educational films and a virtual visit complete the menu which also includes a site aimed at young people.

Every month, around 900,000 internet users consult the site of the National Assembly.

☞ *See also file 62*

I. – PUBLICATION OF PARLIAMENTARY PROCEEDINGS

1. – PUBLIC DEBATES

From the home page of the site, the internet user may access the agendas, calendars and minutes of the debates of the National Assembly and of its committees and commissions. The provisional minutes of a plenary sitting are placed on-line during the sitting and the official minutes are online on the same or the following day.

The live videos of the plenary sitting and of the committee meetings open to the press are accessible from the home page and can be viewed on mobile telephones (www.assemblee.mobi).

Older videos can be consulted and downloaded for free either live or at leisure through the video portal.

2. – LEGISLATION

All parliamentary documents (Government bills, Members' bills, legislative reports, minutes, results of votes and bills passed etc.) are accessible in full on the internet site.

The integral legislative files, for each bill tabled, retrace, in an exhaustive manner, all the steps of the procedure. After the definitive passing of the law, the file presents, if the case applies, the state of publication of the implementation decrees and the assessment reports on the law which have been carried out by the parliamentary missions.

3. – MONITORING THE GOVERNMENT

The site publishes on-line the information reports of the standing committees, of the delegations of the National Assembly, of the fact-finding missions and of the commissions of inquiry, as well as those of the Parliamentary Office for Scientific and Technological Assessment and the proceedings of the Commission for Assessment and Monitoring of Public Policies.

In addition, all questions asked by M.P.s along with their ministerial replies are available on the site.

II. – NOTES ON AND PHOTOGRAPHS OF M.P.S

The notes on and photographs of M.P.s are placed on line and archived under each term of Parliament. Each file relates the biography, terms and contact details of the M.P. It also presents the work of the M.P. (Member's bills, motions, reports, speeches during the plenary sitting and committee meetings).

The file of each M.P. provides a list of the questions he has asked and the answers he has been given.

The videos of each M.P.'s speeches in plenary sitting or in committee are also gathered and accessible on his/her page.

III. – EUROPEAN AND INTERNATIONAL ACTIVITIES OF THE NATIONAL ASSEMBLY

The Constitution has provided the Parliament with a mission to monitor European legislative procedure. Thus the site of the National Assembly publishes the work, minutes and information reports of the European Affairs Committee

which follows the procedures for the drawing-up of European law as well as documents relating to resolutions adopted by the National Assembly on bills emanating from European Union bodies.

The international activities of the National Assembly which are announced in a weekly diary, lead to the publication of numerous documents on the site. These include reports of friendship groups, proceedings of symposiums or speeches.

IV. – ARCHIVES OF PARLIAMENTARY PROCEEDINGS

In 2008, to mark the 50th anniversary of the first sitting of the National Assembly under the Fifth Republic, all the minutes of plenary sittings, all written questions and the corresponding analytical and nominative tables from the archives, as well as the legislative files of the last terms of Parliament, i.e. around 350,000 paper pages, were placed on-line on the internet site.

V. – EVENTS AT THE *PALAIS BOURBON*

Events or exhibitions which take place at the National Assembly are announced and illustrated on the site.

VI. – OTHER INFORMATION

1. – PORTAL TO OTHER SITES

The home page of the internet site of the National Assembly grants access to the site of the programmes broadcast by the parliamentary channel (LCP-National Assembly) as well as to the interactive Children's Parliament site. The latter allows those classes who participate to publish on-line the work they have carried out in the preparation of the Children's Parliament.

2. – GENERAL INFORMATION

The role, the working and the history of the National Assembly are described in "*Connaissance de l'Assemblée*" ("Getting to Know the National Assembly").

One section deals with practical information allowing citizens to know, for example, the details of how to visit the National Assembly, the conditions for the recruitment of parliamentary civil servants or to discover the products on sale at the *Boutique de l'Assemblée*.

VII. – TECHNICAL PRESENTATION

The conception and maintenance of the site are carried out by the multimedia team in the Communication and Multimedia Information Department and by the Information Systems Department of the National Assembly.

A general update of the pages published is systematically carried out every day around 7am, preceded by an update of the information provided by the different databases of the information system.

Specific updates are also carried out regularly during the day, depending on the agenda, the availability of the most frequently requested documents and the progress of the proceedings in plenary sitting. Thus it is possible to consult an updated version of the minutes of debates all along the sitting.

The internal production site is duplicated outside the National Assembly and is accessible on the web via a host transmission server which is managed by a company chosen after tender. The broadcasting of videos is hosted separately.

The on-line information on the site of the National Assembly is public. The reproduction of the contents of the site pages may be authorized, particularly for publishers and those transmitting public data, by prior written request, and on the condition of mentioning the source, not infringing intellectual property rights and respecting the integrity of the documents reproduced. In no case may this information be used for commercial or advertising reasons.

File n°65

The Parliamentary Television Channel (*LCP-Assemblée Nationale* and *Public Sénat*)

Key Points

The Parliamentary Television Channel was set up on December 30, 1999 and broadcasts programmes made by two companies: *La Chaîne Parlementaire-Assemblée Nationale* and *Public Sénat*.

In accordance with the principle of the separation of powers, these two companies do not come under the authority of the regulatory body for broadcasting (The High Council for Audiovisual Matters). Their respective chairmen are appointed by the *Bureau* of each Assembly.

They enjoy total editorial independence and broadcast programmes 24/24 hours. These programmes are mainly made up of parliamentary proceedings, studio panel shows and report-type magazine broadcasts as well as news bulletins.

☞ *See also files 62 and 63*

I. – ESTABLISHED BY LAW

The Parliamentary Channel was set up by the Law of December 30, 1999 and was born out of a long-standing and deep desire on the part of the National Assembly and the Senate to contribute to the development of the presentation of parliamentary proceedings on television. The Parliamentary Channel began broadcasting in spring 2000, taking the place of a programme which had been retransmitting 'raw' parliamentary debates since 1993.

According to the terms of the law, the Parliamentary Channel "*fulfils a public service mission aiming at informing and increasing the knowledge of citizens in the sphere of public life, by means of parliamentary, educational and civic programmes*".

II. – ONE FREQUENCY FOR TWO CHANNELS

The law provides that the frequency given over to the broadcasting of the Parliamentary Channel must include, in equal airtime, the programmes made by two companies: *La Chaîne Parlementaire-Assemblée Nationale* and *Public Sénat* (LCP-AN). Thus, in fact, there are really two parliamentary channels.

These two programme companies are linked to the National Assembly for one and to the Senate for the other, by a covenant which provides, in particular, for the grants by which they are funded. They are companies in private law whose capital is entirely in the hands of the assembly to which they are linked.

The law grants these two companies a status which gives them an editorial independence guaranteed by their chairmen (appointed for three years by the *Bureaux* of the assemblies upon a proposal of their President) and their boards of directors (which are made up, in particular, of representatives of each political group in Parliament).

In accordance with the constitutional principle of the separation of powers, these two companies do not come under the authority of the regulatory body for broadcasting (The High Council for Audiovisual Matters). Similarly, although they receive public funding, they do not come under the jurisdiction of the Court of Accounts, on account of the principle of autonomy (and in particular financial autonomy) of the assemblies. Thus the companies are under the authority of the *Bureau* of each of the assemblies and these are the bodies which monitor that the regulations which apply to thematic television channels and to the respect of the impartiality of programming are maintained. During election campaigns the *Bureau* of the National Assembly applies the same rules concerning broadcasting time to LCP-AN as the High Council for Audiovisual Matters sets for channels which fall within its remit.

III. – A VARIETY OF PROGRAMMES

The Parliamentary Channel has been available since March 31, 2005 by Hertzian reception on the free digital terrestrial television multi-channel package (channel 13). It is also broadcast on the entire cable and satellite network, and is available on broadband connections on account of a provision of the law which obliges all television and internet providers to offer these channels free of charge to all subscribers. Its programming which is divided between *LCP-AN* and *Public Sénat* is broadcast 24/24 hours, seven days a week.

Each of the two channels also broadcasts its own programming via its internet site (www.lcpan.fr for *LCP-AN* and www.publicsenat.fr for *Public Sénat*). These two sets of programmes are available on separate channels by means of the main multi-channel television packages on broadband.

In addition to their technical and administrative structure which is similar to any television company, *LCP-Assemblée nationale* and *Public Sénat* both have

editorial teams of around fifteen journalists and have had technical facilities (studio, control room etc.) in the National Assembly and the Senate for several years now.

The programmes of the two channels are broadcast in alternation within the daily programme scheduling of the Parliamentary Channel. Each company makes its programming choices entirely independently of both the other company and the assembly with which it is linked. The channels do broadcast parliamentary committee or plenary sitting debates either live or at a later time, but the majority of their broadcasts are studio panel shows or report-type magazine programmes, as well as general news bulletins.

In addition, the law prohibits the broadcasting of advertising or tele-shopping programmes.

File n°66

The Children’s Parliament

Key Points

The Children's Parliament has been jointly organized every year since 1994 by the departments of the National Assembly and those of the Ministry of National Education. On account of the presidential and general elections there was no Children's Parliament in 2007, nor in 2012.

It represents a “full-scale” lesson in civic education for the 577 children in their final year of primary school (one per constituency).

Choices are made both of the classes who are to be represented (and who will choose their own junior M.P.) and of the bills to be debated and the questions to be put to the President of the National Assembly and the Minister of Education. The process takes place first at a local education authority level and then nationally and begins quite early in the school year, reaching its climax at the end of the month of May.

The Children’s Parliament takes place on a Saturday in June. The three best draft bills are examined during the morning by the children sitting in standing committees under the chairmanship of M.P.s. They are put forward by their authors and voted upon during the plenary sitting that very afternoon.

The website of the Children’s Parliament: www.parlementdesenfants.fr, presents the entire operation in an interactive manner.

☞ *See also file 62*

As civic education is an integral part of the objectives of the school system, such a system must cover awareness of the universal values of the rights of man, of democracy and of the Republic.

This awareness is particularly displayed in the operation called the “Children's Parliament” which was set up in 1994 by Mr. Philippe Séguin, then President of the National Assembly and has been repeated every year since, except in 2007 and in 2012 on account of the holding of presidential and general elections. It is based on a concrete presentation of the French parliamentary system and is jointly organized by the departments of the National Assembly and of the National Education ministry. It takes place throughout the school year and reaches its crescendo a Saturday in June at the *Palais Bourbon*.

Children of between ten and eleven years old in the CM2 class, i.e. the final year of primary school, are asked to collectively prepare a draft bill. At the end of the year the representatives of the children of these classes, meeting in the “Children's Parliament” are asked to vote for one of the three draft bills that have been selected on a national scale.

These children thus receive a “large-scale” lesson in civic education.

A website www.parlementdesenfants.fr presents the entire operation in an interactive manner and the contributions of the classes are published on-line.

I. – SELECTION OF THE CLASSES

Since not all final-year primary school classes in metropolitan France and its overseas territorial units could send a representative to the Children's Parliament, were it only for the limited number of seats available in the Chamber of the National Assembly, it was decided that there should be the same number of participating classes as M.P.s, i.e. nowadays 577.

Thus it is within each of the 577 electoral constituencies, once the applications have been received by mid-November, that the departmental services of the Ministry of National Education choose the class, which for each constituency, will participate in the event. This choice is carried out after consultation, if necessary, with a selection committee. If in the rare cases where, within a department, no class is candidate, the departments of the Ministry of National Education will select one.

The list and the addresses of the classes chosen are transmitted to the Communication Department of the National Assembly. M.P.s are informed of the class from their constituency which will take part in the event. They may also pay it a visit. The Departments of the National Assembly send a teaching pack to the classes in question and they are invited to come to visit the National Assembly.

II. – WORK OF THE SELECTED CLASSES

The work of the classes selected is to draw up a draft bill. This draft bill must fulfil certain formal criteria. In order to help the teachers, working themes are suggested without there being any binding nature to them.

Each class must also draw up two questions: one for the National Education minister and the other for the President of the National Assembly.

This work has to be sent in by mid-March.

III. – PUPIL REPRESENTATIVES: THEIR APPOINTMENT AND ACCOMPANYING ADULT

The pupils of each class selected elect one of their classmates to represent them at the National Assembly. The 577 children thus chosen attend the Children's Parliament at the National Assembly and sit in the Chamber, in the seat of the M.P. of their constituency. A substitute is appointed for each one in the case of absence.

The teacher then informs the families of the representatives to ensure that they agree to the participation of their child in the sitting at the National Assembly and to gain an agreement on the person who will accompany them (one person per child is permitted since because of organizational reasons and on account of space only one adult per child can be hosted at the *Palais Bourbon*). The accompanying adult is chosen by the family: for obvious safety reasons it must be one of the two parents or a person appointed by the family. A prior written agreement must be drawn up with the persons in question concerning the communication of their personal address.

Before the end of January, the names of the representatives, those of the substitutes and the names and addresses of the accompanying adults are transmitted to the departments of the Ministry of National Education and those of the National Assembly.

IV. – HOW THE WINNING CLASSES ARE CHOSEN AT A REGIONAL AND NATIONAL LEVEL

1. – SELECTION AT A REGIONAL LEVEL

As the work of each class is handed in before mid-March, the juries convene before the end of the same month in each region.

These juries select the best draft bill for the region and name a winning class. Their criteria are the following:

– The draft bill must fulfil the formal criteria;

– It must be a true piece of work of the pupils and correspond to their reasoning and their way of expression;

– It must be a reflection of future citizens on societal problems;

– It must correspond to real action to be taken or a possible law to be enacted.

In addition and independently of the bills chosen, the juries also select a question for the Minister of National Education and another for the President of the National Assembly. The draft bills and the set of two questions are sent to the Education Board at the beginning of April.

2. – SELECTION AT A NATIONAL LEVEL

The national jury, made up of members of the National Education ministry and personalities chosen for their expertise by the National Assembly, meets before mid-May. It chooses the three best bills in no particular order according to the aforementioned criteria from amongst all the bills selected at a regional level.

These three bills are printed by the printers of the National Assembly in the form of "parliamentary documents" and are sent to all the participating classes before the end of May so that they may debate them and give their opinion to their "junior representative" on which they feel is the best. The final choice will be the result of the vote of the "junior representatives" at the *Palais Bourbon*".

The questions which will be asked to the minister and to the President of the National Assembly are chosen from amongst those selected by the regional juries.

V. – TRIP AND TIMETABLE FOR THE CHILDREN'S PARLIAMENT

On the day of the event, the 577 "junior representatives" arrive at the *Palais Bourbon* for a day divided into two parts.

In the morning, the children meet in committee chaired by M.P.s whose duty it is to lead a debate on the three bills.

In the afternoon, the children sit in the Chamber, each in the seat of the M.P. of their constituency.

The sitting begins with a speech by the President of the National Assembly. Then questions are asked to the President and to the minister who reply. After this, the three "junior representatives" of the classes whose bills have been selected take the floor at the rostrum to read a presentation of the reasons for their bill. The President of the National Assembly then has each of the bills voted upon. The results are announced by the President who then declares the final result of the Children's Parliament.

The organization of this phase of the event is carried out by the departments of the National Assembly. They are in charge of informing the families of the practical aspects of the trip, the stay and the timetable of the day in Paris. All transport fees are reimbursed by the National Assembly.

File n°67

The Status and Career Development of Civil Servants of the National Assembly

Key Points

The civil servants of the National Assembly are State civil servants; however, the statutory provisions which concern the rest of the civil service do not apply to them. They are provided with a separate status which is decided upon by the *Bureau* of the National Assembly in application of the constitutionally-binding principle of the separation of powers, which has its corollary in the administrative and financial autonomy of the Assembly.

The Rules of Procedure on the Organization of Departments which define the status of the staff of the National Assembly, set a cap of 1,349 on the number of civil servants. These are divided between 5 general branches (advisers, deputy advisers, departmental secretaries, administrative secretaries and porters) representing 80% of the staff and 21 specialized branches.

The civil servants of the National Assembly are recruited exclusively by competitive entrance examination. Most of them will work in a variety of jobs in the various departments of the Assembly throughout their career. They may be seconded to external bodies in certain circumstances and can take advantage of in-house training.

As in the rest of the civil service, each of the branches of the civil service within the National Assembly is divided into ranks and each of these is sub-divided into classes and subsequently into grades. Promotion from one grade to the next depends upon length of service whilst promotion from one class or rank to the next is obtained on the basis of merit according to a joint procedure.

☞ *See also file 77*

I. – THE STATUS OF CIVIL SERVANTS OF THE ASSEMBLY

According to article 8 of ordinance n°58-1100 of November 17, 1958 on the operation of the parliamentary assemblies, "*tenured staff of parliamentary assembly departments are State civil servants whose status and retirement scheme are decided upon by the* Bureau *of the relevant assembly after consultation with the trade union staff representatives. They shall be recruited by competitive examination according to rules determined by the relevant bodies in each assembly. Administrative courts shall be called upon to deal with any*

individual disputes concerning such staff and their decisions shall be based upon the general principles of law and the fundamental guarantees recognized for all State civilian and military civil servants, as laid down in article 34 of the Constitution".

These legislative provisions are based on the constitutionally-binding principle of the separation of powers, which has its corollary in the administrative and financial autonomy of the Assembly.

The civil servants of the departments of the National Assembly are thus State civil servants however the statutory provisions which concern the rest of the civil service do not apply to them. They are provided with a separate status which is decided upon by the *Bureau*. This status may not, however, be in contradiction with the general principles of law and fundamental guarantees recognized for other civil servants.

This status which is decided upon by the *Bureau* takes the form of Rules of Procedure on the Organization of Departments which define the status of the staff of the National Assembly. This document is usually referred to as the "Rules of Procedure". It is supplemented by statutory application decrees which are decided upon either jointly by the President of the National Assembly and the *Questeurs* or by the *Questeurs* alone.

Despite some particularities which are due to the institution and to its history, the status of the civil servants of the National Assembly is quite close to that of other civil servants.

It must however be noted that the staff of the National Assembly have a very strict duty of professional discretion and political neutrality.

The staff also have an obligation of absolute availability as their rhythm of work must, at all times, be adaptable to that of parliamentary activity, be it according to the legislative calendar (extraordinary sessions) or the timetable of sittings (night sittings and committee meetings). It is for this reason that there is no provision setting down a weekly work limit or an annual right to holidays.

II. – STAFF STRUCTURE

All permanent positions within departments, with the exception of very technical jobs held by contract workers, are carried out by civil servants recruited by competitive examinations specific to the National Assembly.

Article 5 of the Rules of Procedure sets a cap of 1,349 on the number of civil servants. These are divided between 5 general branches representing 80% of the staff and 21 specialized branches representing 20%.

The distribution of civil servants is as follows: about 48% in legislative departments, 46% in administrative departments and 6% in joint departments.

The average age of civil servants of the National Assembly is currently almost 48 years old. Nearly 46% are older than 50 and 35% are between 40 and 50. Those under 40 represent only 19% of the overall staff numbers. Nonetheless, there are great differences between the various branches.

The general branches are the following:

– *Advisers and senior advisers (174)*: they are recruited among candidates possessing a Masters level. Once they have reached the rank of senior adviser they take on managerial positions: 45 senior advisers are heads of unit. Above this they may become directors (16), general directors (2) or secretaries general (2).

– Advisers work mainly in legislative departments (95% of the positions outside managerial posts) where they provide legal and technical assistance to M.P.s in the drawing-up of the law and in the monitoring of Government action. In the administrative or joint departments they mainly hold managerial positions.

– *Deputy advisers (136, including 23 computer experts)*: candidates for the competitive examinations must have a Bachelor level. They mainly carry out management and documentation duties. In administrative departments they hold all the positions which were previously held by advisers.

– *Departmental secretaries (190)*: candidates for this examination must have a professional secretarial diploma or a minimum of two years experience in the secretarial field. Departmental secretaries carry out the duties of an executive secretary including data processing.

– *Administrative secretaries (55)*: these are recruited by internal competitive examination from among the porters. They carry out general administrative tasks.

– *Porters (523)*: candidates for these positions must have professional experience of at least three years. They must also possess either a professional diploma or the school certificate taken at 16 years of age. They mainly carry out duties connected to reception, internal services or guided tours. The chauffeurs from the Transport Department are also part of this branch.

The specialized branches correspond to the following positions or jobs:

– *The writing-up of minutes:* 63 précis-writers recruited at Master's level.

– *Security*: 62 security officers. This competitive examination is limited to members of the military with at least fifteen years of service.

– *Computing*: 3 engineers, 2 deputies to the head of software programmes and 11 technicians, with the same status as administrative secretaries. In addition, the deputy adviser branch includes 23 computer experts.

– *Buildings:* the maximum staff provided for is 5 chief engineers and chief architects, 6 engineers and architects, 4 draftsmen and 47 professional workers divided between two categories.

– *Catering:* one technical director and 57 restaurant staff divided into three categories.

– *Various positions*: medical assistants, head of car-pool, mechanics, photographers etc.

The hierarchy within the branches is as follows:

– level 1: advisers, précis-writers, chief engineers and chief architects and computer engineers;

– level 2: deputy advisers and assimilated civil servants, technical director of the restaurants and catering staff belonging to the 4th category;

– level 3: departmental secretaries and assimilated civil servants, administrative secretaries, catering staff belonging to the 3rd category and professional workers belonging to the 3rd category;

– level 4: porters, security officers, catering staff belonging to the 2nd category and professional workers belonging to the 2nd category;

– The three deputies to the head of software programmes are situated on a hierarchical level between level 1 and level 2.

Civil servants belonging to a specific branch have the possibility of being promoted to the next highest branch. Such promotion is carried out exclusively by competitive examination.

With the exception of specific provisions concerning staff appointments, the individual decisions concerning civil servants are the responsibility of:

– the President and the *Questeurs* as regards civil servants in categories 1 to 3, except for catering staff belonging to the 3rd and 4th categories and professional workers of the 4th category;

– the *Questeurs* for all other civil servants.

Nonetheless:

– the appointment of departmental directors and decisions concerning the secretaries general are the responsibility of the *Bureau*;

– the determination of the salary index for all civil servants is the responsibility of the *Questeurs.*

III. – CAREER AND ADVANCEMENT

1. – RECRUITMENT BY COMPETITIVE EXAMINATIONS

Civil servants of the National Assembly are exclusively recruited by competitive examination according to rules set down by the *Bureau*.

The Rules of Procedure limit access to such examinations to French citizens and to citizens of the other member states of the European Union. The *Questeurs* are informed of the holding of all examinations and of any change in the rules of such examinations. At the end of the tests, the *Questeurs* receive a report on the results of the examinations, take official notice of the list of successful candidates and set down a date for the validity of the waiting list, should there be one.

The successful candidates must then carry out a year's trial period as a probationer before being granted full tenure in their specific branch.

2.– MOBILITY WITHIN THE DEPARTMENTS OF THE NATIONAL ASSEMBLY

Throughout their careers, the civil servants belonging to the five general branches will experience a variety of positions in both the legislative and the administrative departments.

Many measures have been taken in recent years in order to develop and encourage the mobility of "general" civil servants within the various departments of the National Assembly:

- Certain *conditions for mobility* have been gradually introduced into all the branches so that civil servants may have access to a promotion in their rank. Thus advisers may only be appointed senior adviser once they have held a position in two different departments for a minimum of two years each. Senior advisers may not be appointed directors unless they fulfil the same criteria. In addition, they must have carried out a period of three year in an administrative position since taking on a managerial post;
- Since April 2007, the maximum length of stay in a particular position for a "general" civil servant is eight years notwithstanding the examination by the secretaries general of the specific facts concerning individual situations (nearing retirement, special needs, particular requirements of the department etc.);
- "Bridges" have recently been introduced allowing mobility between advisers and précis-writers.

3.– EXTERNAL MOBILITY

The mobility of staff towards other administrations is possible and is even encouraged in some branches. It may take two forms:

– Advisers, précis-writers and deputy advisers may be placed "at the disposal" of a number of defined external bodies: foreign parliaments, European institutions, international organizations, the Economic, Social and Environmental Council, jurisdictional bodies or independent public or administrative authorities. In this case, the civil servant keeps his rights concerning promotion and retirement and continues to be paid by the National Assembly. This type of mobility is relatively institutionalized as a certain number of bodies regularly receive civil servants of the National Assembly who are placed at their disposal (Constitutional Council, *Conseil d'État*, Court of Accounts etc.).

– Secondment is the second type of mobility and is open to all categories. In this case, the civil servant keeps his rights concerning promotion and retirement but is paid by the receiving body. The list of bodies to which a civil servant may be seconded is much broader; in particular, it is possible to be seconded to a local authority which is not the case for the aforementioned type of mobility.

4. – IN-HOUSE TRAINING

The types of in-house training on offer are mainly centred on the positions to be filled and these in turn vary as the activities and interests of the National Assembly evolve (increase in international programmes, progress in computer techniques, strengthening of security, development of communication etc.). An annual training project which is based on the plans of the various heads of department of the National Assembly combined with individual requests, is implemented by the Human Resources Department.

There are six main areas of training: foreign languages (group and individual classes), security (techniques linked to access security, first-aid), computing (professional training for computer specialists in professional software), technical training periods (linked to specific positions such as writing of minutes, classes on public tenders, electricity, cooking), outside internships (foreign parliaments, major national institutions) and communication and management techniques (reception, management etc.).

Training programmes are also offered to civil servants who wish to sit the internal competitive examinations.

IV. – CAREER STRUCTURE

As in the rest of the civil service, each of the branches of the civil service within the National Assembly is divided into ranks and each of these is sub-divided into classes.

Each class and each rank have their own salary scale which is divided into grades. Each grade of this scale corresponds to an index which determines the salary.

Every civil servant has the right, in principle, every two years, to an advancement in grade based on length of service. Once he has reached the last grade on the index scale, his grade may no longer increase until he is appointed to the next highest rank or class.

Increase in grade within a class or a rank, is carried out according to length of service and occurs every two years. It may be delayed for disciplinary reasons or on account of lack of professionalism. Promotion from one class or rank to the next is obtained on the basis of merit. Candidates are included on a promotion table drawn up by the President and the *Questeurs* upon a proposal of the Promotion Committee made up equally of representatives of the administration and of elected delegates of the staff.

The career development for the five "general" branches is the following:

– *Advisers*: they may be liable for promotion to the rank of senior adviser after twelve years. After four more years senior advisers reach the level of 'special category' in their rank. At this stage they may be appointed director and then general director. Appointments to these last two ranks, which are made by the *Bureau* and which only take place when a post is left vacant, do not require the drawing-up of a promotion table. Special category senior advisers may, in addition, be given, upon a proposal by the secretaries general, the title of deputy director, which does not constitute a rank.

– Members of the branch of précis-writers may have a similar career, although they may not go as far as the rank of director general.

– *Deputy advisers*: they enter the first class category upon being given tenure and can reach special category after eleven years service. At the end of a further five years, special category deputy advisers may be liable for promotion to the rank of principal. Principal deputy advisers may reach the level of exceptional class after three years at that rank.

– *Departmental and administrative secretaries*: they enter the second class category upon being given tenure and can reach the first class category after eleven years of service. After five years in the first class category they can reach special category. They may be appointed head of section after having spent two years in the special category.

– *Porters*: they enter the first class category upon being given tenure and can reach special category after eleven years service. At the end of a further three years, special category porters may be liable for promotion to the rank of first porter. First porters may be appointed head of group after three years at that rank. They may then become deputy head porter and subsequently head porter. At the top of this branch is the rank of Head of Porters of which there is only one.

File n°68

The Structure of the Departments of the National Assembly

Key Points

The departments of the National Assembly are divided into legislative departments, administrative departments and joint departments.

☞ *See also files 69 to 80*

The departments of the National Assembly are divided into legislative departments, administrative departments and joint departments.

- The **Secretary General of the Assembly and the Presidency**, aided by a Director General of Legislative Departments, is accountable before the President of the National Assembly for the correct operation of the twelve legislative departments which are:
- General Secretariat of the Presidency;
- Table Office;
- Legal Affairs;
- Cultural and Social Questions;
- Economy and Scientific Assessment;
- Public Finance;
- European Affairs;
- International and Defence Affairs;
- Communication and Multimedia Information;
- Library and Archives;
- Verbatim Report for the Sittings;
- Verbatim Report for the Standing Committees.

There is, in addition, a unit for the Permanent Representation of the National Assembly to the European Union and the Protocol and Management Unit which both answer directly to the Director General of Legislative Departments.

The **Secretary General of the *Questure***, aided by a Director General of Administrative Departments, is responsible to the *Questeurs* for the correct running of the five administrative departments which are:

– General Administration and Security;

– Parliamentary Logistics;

– Budget, Financial Monitoring and Procurement;

– Financial and Social Management;

– Buildings and Heritage.

The **joint departments** are placed under the joint authority of the secretaries general. They cover the Information Systems Department and the Human Resources Department.

File n°69

The Secretaries General

Key Points

One of the defining elements of the administrative structure of the National Assembly is its two-headed aspect: the running of its two distinct poles (legislative departments and administrative departments) is carried out by two high-ranking civil servants appointed by the *Bureau* of the Assembly.

The Secretary General of the Assembly and of the Presidency assists the President in plenary sitting and helps him in all matters concerning the institutional running of the Assembly, particularly in his relations with public powers. He is responsible to the President for the correct running of the legislative departments.

The Secretary General of the *Questure* assists the three *Questeurs*, whose responsibility it is, under the authority of the *Bureau*, to deal with all administrative and financial questions. He is responsible to them for the correct running of the administrative departments.

The two secretaries general are together responsible for the correct running of the joint departments to the President and to the *Questeurs.*

☞ *See also files 19, 20, 21, 64 and 68*

As the fourth figure of the State, the President of the National Assembly is directly or through the chairmanship of the *Bureau*, the principal person in charge of the correct running of the Assembly and, in this capacity, has authority over all of its Departments.

However, since the origin of Parliament, M.P.s considered that for their work to be carried out in the best conditions, it should not be burdened by material problems. Therefore, they appointed, amongst their own members, M.P.s specifically in charge of the administrative and financial management of their assembly. In 1803, these appointees received the name of *Questeurs*.

Thus, the activities of the staff responsible for assisting the representatives of the Nation were divided into two poles. The first, under the direct authority of the President, was centred on legislative activity and the second, under the main authority of the *Questeurs*, was organized around administrative tasks.

Two high-ranking civil servants head these two poles: the Secretary General of the Assembly and of the Presidency and the Secretary General of the *Questure*.

I. – APPOINTMENT, SUBSTITUTION, RETIREMENT

The Secretary General of the Assembly and of the Presidency and the Secretary General of the *Questure* are appointed by the *Bureau* of the National Assembly. In theory, they are selected from amongst civil servants of all categories but in practice, they come from the ranks of civil servants holding the position of Director General or Director, so as to ensure that they have the ability, experience and authority necessary for the carrying-out of their positions.

The two secretaries general are assisted, for the former, by a Director General of Legislative Departments and, for the latter, by a Director General of Administrative Departments. The directors general replace them if need be and have, in such a situation, authority over all the legislative and administrative departments.

The secretaries general, who are appointed until the age limit of their rank, may, by right, retire at the age of sixty-five.

II. – MAIN REMIT

1. – THE SECRETARY GENERAL OF THE ASSEMBLY AND OF THE PRESIDENCY

The Secretary General of the Assembly and of the Presidency plays the role of adviser to the President in all matters concerning procedure. He/she assists the President in plenary sitting.

Outside of questions linked to the running of debates, he/she provides the President with assistance in all matters concerning the institutional operation of the Assembly and in particular with his relations with public powers. He/she is in charge of the preparation, the holding and the follow-up of the meetings of the *Bureau*. The *Bureau* is the supreme collegial body of the Assembly and has full power in the making of rules concerning the deliberations of the Assembly and in the organization and management of all its departments.

The Secretary General of the Assembly and of the Presidency is responsible to the President for the correct running of the thirteen legislative departments: the General Secretariat of the Presidency, the Table Office, Legal Affairs, Culture and Social Questions, Economy and Scientific Assessment, Public Finance, European Affairs, International and Defence Affairs, Communication and Multimedia Information, the Library and Archives, the Verbatim Report Departments for the Sittings and for the Standing Committees and, finally, the Protocol and Management Unit.

2. – THE SECRETARY GENERAL OF THE *QUESTURE*

The Secretary General of the *Questure* assists the three *Questeurs* who, under the authority of the *Bureau*, of which they are members, have extensive powers in financial, accountancy and administrative matters within the framework of the autonomous management of the National Assembly.

To do so, he arranges the meetings of the *Questure*. He also, along with his departments, prepares the files which will be submitted to the *Questeurs*, draws up the minutes, records the decisions and ensures their implementation.

The Secretary General of the *Questure* is responsible to the *Questeurs* for the correct running of the administrative departments: the General Secretariat of the *Questure*, the General Administration and Security Department, the Parliamentary Logistics Department, the Budget, Financial Monitoring and Procurement Department, the Financial and Social Management Department and the Buildings and Heritage Department.

The two secretaries general together head two joint departments: the Human Resources Department and the Information Systems Department.

File n°70

The Budget of the National Assembly

Key Points

The rules which apply to the budget of the National Assembly are based on the principle of the financial autonomy of each of the parliamentary assemblies which itself is founded on the more general principle of the separation of powers.

The National Assembly and the Senate prepare their annual draft budget separately, each under the authority of their *Questeurs*. After that, a joint committee meets, consisting of the *Questeurs* from the two assemblies (six in all) and chaired by a member of the Court of Accounts, himself assisted by two judges of the Court of Accounts with a consultative voice. This joint committee decides on the amount of funds necessary for the operation of each assembly and this amount appears in the finance bill. An explanatory report drawn up by the joint committee is annexed to the finance bill.

The two assemblies then manage their budgets as they so desire. The normal rules of public accountancy are not applicable although the rules set down by the *Bureau* of the National Assembly are very widely based on them.

The monitoring of the implementation of the budget is carried out, in each assembly, by an internal committee. In the National Assembly this committee is made up of fifteen M.P.s appointed in proportion to the representation of the political groups. It draws up an annual report which is made public and to which is annexed the certification of the Assembly's accounts. This certification is drawn up independently by an external body.

☞ *See also file 21*

The principle of the financial autonomy of the parliamentary assemblies, which is based on the more general principle of the separation of powers, was long recognized by law professors before being enshrined in the law and accepted by the Constitutional Council.

– Article 7, paragraph 1 of ordinance n° 58-1100 of November 17, 1958 concerning the operation of the parliamentary assemblies provides that "*each parliamentary assembly possesses financial autonomy*".

– More recently, the Constitutional Council based one of its decisions on "the rule, according to which the constitutional public powers decide themselves on the funds necessary for their operation" and stated that

> "this rule is, in fact, inherent in the principle of their financial autonomy which guarantees the separation of powers" (decision n° 2001-456 of December 27, 2001 on article 115 of the Finance Act for 2002).

This autonomy is represented both in the method used to draw up the budget and in the conditions of its implementation and monitoring.

I. – THE DRAWING-UP OF THE BUDGET FOR THE COMING YEAR: FREEDOM OF CHOICE IN DECISIONS CONCERNING THE EXPENDITURE AND RESOURCES OF THE PARLIAMENTARY ASSEMBLIES

1. – THE BASIC DRAFT

Article 7 of ordinance n° 58-1100 of November 17, 1958 sets down, in its two last paragraphs, the procedure to be followed:

"*The funds necessary for the operation of the parliamentary assemblies are laid out in proposals made by the Questeurs of the two assemblies and decided upon by a joint committee made up of the Questeurs of the two assemblies. This joint committee is chaired by a president of a division of the Court of Accounts who is appointed by the First President of this Court. The latter also appoints two judges from his court to assist the committee. They have a consultative voice in the deliberations.*

"*The proposals which are thus decided upon are included in the budgetary bill and an annex is added consisting of an explanatory report drawn up by the joint committee mentioned in the previous paragraph*".

2. – THE PREPARATION OF THE BUDGET

a) Preparation at the National Assembly

Near the end of the first quarter of the year (y), the *Questeurs* of the National Assembly decide upon the main trends for the budget of the following year (y+1). In particular, they set the overall increase rate for expenditure after having noted the value of the index point for the civil service which serves as the benchmark for salary expenditure.

Using these trends and the accounts of the previous year (y-1) as a basis, the various departments of the National Assembly draw up their draft budget.

The Budget Department analyses these draft budgets and summarizes them. In the case of a divergence of opinion, it attempts to reach an accommodation with the department in question. If there is still disagreement the matter is put to the Secretary General of the *Questure* for arbitration.

The draft budget which is thus drawn up and which includes an analysis of the expenditure forecast, the amount of the allocation which will be requested in the finance bill as well as the share of the financing to be acquitted by the

Assembly's own resources, is then settled by the College of *Questeurs* and submitted to the *Bureau* of the Assembly, a body made up of the President of the National Assembly, the six vice-presidents, the three *Questeurs* and the twelve secretaries of the National Assembly.

b) The Role of the Joint Committee

In mid-June, the College of *Questeurs* sends a report on the draft budget to the chairman of the Chamber at the Court of Accounts who is also chairman of the joint committee. Each of the two judges who assist the chairman of the joint committee, delivers a report before the joint committee on the budget of one of the two assemblies. He may, in this capacity, request further information

In accordance with the new presentation of the budget since Institutional Law n° 2001-692 of August 1, 2001, pertaining to finance laws, the funds allocated to the two parliamentary assemblies and to the parliamentary television channel are included in a specific mission entitled "public powers", which also covers the Presidency of the Republic, the Constitutional Council and the Court of Justice of the Republic.

The allocation for the National Assembly is not divided into sections, whereas that for the Senate is subdivided into three actions, (the Senate itself, the Luxembourg Gardens and the Luxembourg Museum). The allocation for the parliamentary television channels is divided into two actions: one for the channel called *La Chaîne Parlementaire-Assemblée Nationale* and one for that called *Public-Sénat*. The explanatory report which is provided for by the 1958 ordinance to support requests for allocations is published in its entirety in the booklet listing the funds of the mission.

For each of these allocations, the joint committee sets down an overall amount which corresponds to the funds it considers necessary for the operation of each of the two assemblies.

This procedure is unusual for two reasons:

– It gathers the financial authorities of the two assemblies in the same body. It allows for the sharing of official information between the National Assembly and the Senate without calling into question the autonomy of either of the assemblies. In fact, in practice, the *Questeurs* only comment upon questions dealing with the budget of their own assembly.

– It provides the judges of the Court of Accounts with a specific role in the process of the drawing-up of the budgetary allocations of the two assemblies. The presence of such judges, dating from 1958, is a guarantee of competence and impartiality. However it has always been considered that they do not represent the Court of Account as an institution and are therefore not answerable, in the carrying out of their tasks on the joint committee, to the First President of the Court of

Accounts. The proposals of the *Questeurs* are, in fact, adopted only with the modifications which they themselves have accepted.

3. – THE INCLUSION OF THE BUDGET ALLOCATION FOR THE ASSEMBLIES IN THE FINANCE ACT

a) The Procedure for the Passing of Funds

The chairman of the joint committee sends, on its behalf, the explanatory report concerning the proposals for the budget allocations for each of the assemblies to the Budget Minister.

The minister is not in capacity to voice his opinion and includes the corresponding funds in the finance bill. During the discussion of the bill in committee and in plenary sitting, the rules of common law are applied to the discussion of the funds for the Public Powers mission and thus within this mission to the allocations for the parliamentary assemblies: these funds are, in particular, the subject of a special report of the Finance Committee and may be amended.

The allocation granted by the State represents almost the entire resources of the Assembly.

Once the budget has been passed by Parliament, the *Questeurs* in each concerned assembly decide upon the distribution of the funds included in the finance bill between the various expenditure accounts.

If additional State funds are requested during the year, they are included in a "corrected" finance act following the same procedure as that applied to the initial funds.

b) Information Given to M.P.s and to the General Public

The explanatory report drawn up by the joint committee during its annual meeting is included in its entirety in the budgetary booklet for 'Public Powers' which is a public document. It details the amount and nature of the expenditure forecast, the actual use of the corresponding funds during the previous year, as well as the variation from one year to another. It indicates, in addition to the allocation requested from the state budget, the forecast amount of revenue generated by various sources (through the sales of parliamentary documents, the renting out of meeting rooms etc.). It also states, where necessary, the transfers that the Assembly has decided to make from its own assets to cover the difference between the amount of the expenditure forecast and the combined total of the allocation and various revenues.

II. – THE IMPLEMENTATION OF THE BUDGET: THE RULES SET DOWN BY EACH ASSEMBLY

On account of the budgetary and financial autonomy which applies to the two assemblies, the managing of their budget and the monitoring of the regularity of this management is not subject to scrutiny by the Budget Minister. Similarly no legal oversight is carried out by the Court of Accounts.

1. – THE RULES SET DOWN BY THE NATIONAL ASSEMBLY

The provisions which apply to the budget of the National Assembly are set down in the Budgetary, Accountancy and Financial Rules which are included in a decree of the *Bureau* of the National Assembly.

In fact, this text repeats the main principles of budgetary management and public accountancy: its annual nature, no off-setting of expenditure and revenue, no assignment of the revenue which ensures the implementation of overall expenditure, budgetary specification based on the nature of the expenditure, distinction between investment budget and operational budget, restricted nature of funds other than those concerning salaries and the rule of payment upon services rendered.

During the year, credit transfers ensure the necessary financial flexibility; accounts which are in deficit are topped up from accounts with a surplus or, if necessary, by a transfer from the Assembly's financial assets. There is no legal obligation to inform the Joint Credit Committee of modifications made to the initial budget if no appeal for additional state funding has been made.

2. – THE DIFFERENT PHASES IN A FINANCIAL OUTLAY AT THE NATIONAL ASSEMBLY

These phases are, broadly speaking, the same as for other state administrations but they nonetheless have certain specificities which are linked to the principle of financial autonomy:

- Act of financial engagement (an act by which a requirement is created or recognized on the part of the National Assembly which will result in a financial outlay for it). This act is prepared by the director of the department incurring the expenditure, under the authority of the Secretary General of the *Questure*. It falls within the remit of the *Questeurs* or the lead *Questeur*;
- Whatever the nature of the expenditure concerned, its settlement and payment can only occur once an order for payment has been drawn up by the department concerned in the name of one or several creditors. Documents proving the existence of the service provided must be furnished with the order of payment;
- Act of settlement (the verification of the liability contracted by the act of financial engagement and the establishing of its amount). This is also

drawn up by the department concerned and is carried out by the Secretary General of the *Questure*;

– Order of payment (the administrative act which gives the order to pay an outlay in accordance with the results of the act of settlement). This falls within the remit of the lead *Questeur*;

– The payment of the outlay is made by the treasurer, who is a civil servant of the National Assembly responsible before the *Questeurs* for the funds which are entrusted to him.

3. – ACCOUNTING DOCUMENTS

Every year, the College of *Questeurs* draws up the results and the aggregated account of the National Assembly which includes the accounts of the National Assembly *per se*, those of the pension and retirement systems as well as those of the two social security schemes for M.P.s and staff.

This is accompanied by an information annex which in particular includes an assessment of the social spending of the National Assembly. An outside actuarial office is given the task of carrying out this assessment.

All these documents are drawn up using the principles of the general accountancy plan except where adaptations are necessary on account of the particularities of the National Assembly. Such exceptions are decided upon by a decree of the *Questeurs*.

III. – MONITORING OF BUDGETARY IMPLEMENTATION: INTERNAL AND EXTERNAL MONITORING

The means of monitoring the implementation of the budget are freely set by each of the parliamentary assemblies.

In each of the two assemblies, the *a posteriori* monitoring of the implementation of the budget is carried out by an internal committee.

In addition to this, the true and fair nature of the accounts is also checked by a third body in the framework of the annual certification procedure for the general accounts of the state.

1.– MONITORING BY THE SPECIAL COMMITTEE IN CHARGE OF AUDITING AND BALANCING THE ACCOUNTS OF THE NATIONAL ASSEMBLY

According to article 16 of the Rules of Procedure of the National Assembly, the Special Committee in Charge of Auditing and Balancing the Accounts of the National Assembly, must be made up fifteen M.P.s appointed proportionally according to the representation of each political group. The members of the *Bureau* of the National Assembly and thus, the *Questeurs*, may not be members. The reform of the Rules of Procedure of the National Assembly introduced on May 27, 2009 provides that the position of chairman of this committee may only

be held by a member of the opposition. This provision came into force at the beginning of the XIVth term of Parliament in June 2012.

Every year, the committee examines the accounts of the previous full financial year.

To do this, the Budget Department draws up a draft report. This report is adopted by the *Questeurs* and then passed on by them to the members of the special committee. The latter may directly consult the financial account[1], the accounting documents, the orders and the accompanying documents.

In practice, once they have consulted the report, the members of the special committee send a questionnaire to the *Questeurs*, through the chairman of their committee. The answers drawn up by the various departments involved in the expenditure are returned by the *Questeurs* to each of the members of the special committee when the annual hearing takes place.

Once the special committee has questioned the *Questeurs*, it settles the accounts and the annexed accounting for the previous year of the National Assembly by a decree signed by its chairman and the members of its *bureau*. By the same decree, it entrusts the *Questeurs* with the task of appropriating the results for the financial year, gives them final discharge of their financial management or renders account to the Assembly. It also gives final discharge to the treasurer of the Assembly.

2. – THE CERTIFICATION OF THE ACCOUNTS

The Institutional Act Concerning Finance Acts of August 1, 2001, introduced a certification procedure for the general accounts of the State. The Court of Accounts was tasked with this and it led to the drawing-up by the latter of a report which is annexed to the draft settlement bill for the previous year's budget.

The accounts of the National Assembly and of the Senate are part of the general budget of the State and are thus included in the range of the certification procedure. However, the principle of the autonomy of the parliamentary assemblies blocks the Court of Accounts from carrying out such a certification.

So as to allow the Court of Accounts to provide the overall certification of the general accounts of the State, the Assemblies decided to hand over the contractual audit of their own accounts for certification, to an outside body. This task is currently carried out by the High Council of the Order of Chartered Accountants which is assisted in its mission in each assembly by two audit

1. The financial account is drawn up by the Director of the Budget Department and is signed by the Secretary General of the *Questure* as well as by the *Questeur* in charge. It includes an implementation report on the budget, the final accounts, the balance sheet and its annexes as well as the general balance of the accounts.

offices chosen by it. The High Council and the two audit offices carry out their mission in total independence.

The certification concerns the aggregated accounts described above. The certification report is written by the Chairman of the High Council of the Order of Chartered Accountants for the Chairman of the special committee who immediately transmits it to the Court of Accounts.

3. – THE PUBLIC REPORT ON THE ACCOUNTS

Article 16 of the Rules of Procedure of the National Assembly makes provision for the special committee to draw up a public report at the end of each financial year.

Every year, once it has questioned the *Questeurs*, the special committee examines the draft report drawn up by its chairman. The report, most of which deals with the presentation of the results of the financial year, with the balance and with the final accounts, may include a thematic annex which enables the examination of the expenditure from another perspective than the purely accountancy one (e.g. computer expenses, staff expenses, communication expenses etc.).

The report of the High Council of the Order of Chartered Accountants on the annual audit of the accounts of the National Assembly is published without modifications in annex to the report of the Chairman of the special committee.

File n°71

The Drawing-up, Examination and Approval of *Questure* Decisions

Key Points

Following the principle of management autonomy which the parliamentary assemblies possess and under the supreme authority of the *Bureau*, of which they are members, the *Questeurs* have broad powers in financial, accounting and administrative matters. In order to carry out their duties and to take the decisions which fall within their remit, the *Questeurs* can rely on, in particular, the administrative departments headed by the Secretary General of the *Questure*, who is in charge of all non-legislative aspects of the workings of the National Assembly.

☞ *See also files 21, 69, 70, 77, 78 and 80*

I. – A DECISION-MAKING BODY: THE *QUESTEURS*

1. – AN INSTITUTION WHICH CELEBRATED ITS BICENTENARY IN 2003

As Eugène Pierre reminds us in his "Traité de droit politique, électoral et parlementaire", ("Treatise on Political, Electoral and Parliamentary Law"), "*representatives of a country have always chosen, from amongst their number, members in charge of overseeing that no material worry might occur which would hinder or block the path of legislative work*".

Thus, as of 1789, the National Assembly set out the tasks of those who would be called *Questeurs* by the Senatus Consultum of 28 frimaire, year XII (December 20, 1803), in reference to the administrative and financial role of the *Questeurs* of the Roman Republic.

2. – THE *QUESTEURS* ARE APPOINTED BY THEIR PEERS

The three *Questeurs* are elected by M.P.s at the beginning of each term of Parliament and subsequently every year at the start of the ordinary session, except that which precedes the renewal of the Assembly.

There is in fact great stability in the holding of the office of *Questeurs*.

The appointment of the *Questeurs* follows a desire for pluralism which takes into account the size of the political groups in the National Assembly. In practice, one of the *Questeurs* is always a member of the opposition.

3. – THE *QUESTEURS* HAVE A FOURFOLD ROLE

The tasks of the *Questeurs* are based on the principle of the financial autonomy of the parliamentary assemblies which was reiterated by the ordinance of November 17, 1958. They are detailed by the Rules of Procedure of the National Assembly and the General Instruction of the *Bureau*.

a) They Possess Financial and Budgetary Powers

They draw up and carry out the budget of the Assembly. They control all expenditure and all payments. They take the decisions concerning procurement contracts made by the National Assembly.

b) They Have an Administrative Management Power over the Staff and the Departments of the National Assembly

The Human Resources Department is in charge of the the management of the staff of the National Assembly.

c) They Manage the Relations of the National Assembly with the M.P.s and with the Outside

Thus, they provide the M.P.s with the premises and the material means necessary to carry out their office. They are members of the committee in charge of accrediting the press and of providing access cards and passes as well as authorizations to photograph and to film.

d) They Oversee Procedures in Cases of Conflict

4. – THE *QUESTEURS* TAKE THEIR DECISIONS COLLEGIALLY

The decisions of the *Questeurs* are taken collegially during *Questure* meetings which are usually held every week during the parliamentary session and around twice a month outside that period. The collegiality is slightly offset by the existence of a lead *Questeur*. This position is held, in turns, by each of the three *Questeurs* for a month.

Each *Questeur* has, in theory, the right to veto. In practice, decisions rarely require a vote.

The *Questeurs'* meetings, which are in addition attended by the two secretaries general, the Director General of Administrative Departments and the Director of General Administration and Security, are also an occasion for numerous exchanges on the administrative operation of the National Assembly.

The *Questeurs* are only responsible for their management in front of their peers and this through an *ad-hoc* committee in charge of checking and auditing the accounts.

II. – THE PREPARATION AND THE IMPLEMENTATION OF THE *QUESTEURS* DECISIONS

In order to carry out their duties and to take the decisions which fall within their remit, the *Questeurs* can rely on the administrative departments headed by the

Secretary General of the *Questure* and the joint departments placed under the authority of the two secretaries general.

1. – ADMINISTRATIVE DEPARTMENTS

These departments underwent a restructuring which was adopted by the *Bureau* on October 27, 2010.

The Secretariat General of the *Questure* prepares the *Questeurs'* meetings, oversees, along with the departments, the drawing-up of the files submitted to the *Questeurs*, drafts the minutes, records the decisions and ensures their implementation as well as the publication of the decisions taken,

a) The Director General of Administrative Departments

The Director General of Administrative Departments is tasked with assisting the Secretary General of the *Questure* and deputizes for him, when necessary. He has, in this capacity, authority over all the administrative departments.

- To this effect, he prepares the *Questure* meetings and ensures the follow-up of all decisions taken.
- The Director General oversees the implementation of the decisions of the National Assembly, acting as contracting authority. The measures concerning fire safety which are applicable to the *Palais Bourbon* and to the other buildings occupied by the National Assembly are drawn up and implemented under his authority in collaboration with the Departments concerned.
- He carries out unannounced checks on the assets and the accounts for which the Treasurer of the National Assembly is responsible to the *Questeurs*.

b) The General Administration and Security Department

This department includes two units: *the General Administration* and *Reception, Safety and Security*.

The director of the department is responsible for the implementation and the coordination of all safety and security measures applicable to the *Palais Bourbon* and all other buildings which are the property of the National Assembly.

- *The General Administration Unit* carries out all studies concerning general administration matters; plans all administrative aspects of parliamentary meetings; manages the allocation and maintenance of meeting rooms; services offices allocated to political groups, vice-presidents and M.P.s; provides medical consultations to M.P.s.; provides M.P.s with their identity cards; processes all the insurance files of the National Assembly; deals with sponsorship requests submitted by external bodies; manages the secretariat of the committee in charge of auditing and balancing accounts.
- *The Reception, Safety and Security Unit* designs and, along with the departments concerned, implements and coordinates all safety and security measures regarding individuals and property; it is informed, in good time, of all events to be held on these premises or in the surrounding areas if they are

likely to have an impact on the security situation; it is in charge, subject to the remit of the Communication and Multimedia information Department, of the reception of individuals wishing to enter the National Assembly premises and oversees the proper running of the meetings which take place there; provides security passes as well as vehicle access and parking permits; liaises with the military commanding officer of the *Palais Bourbon* and external security services in charge of security and public order.

The parliamentary security officers are under the authority of the head of this unit.

Under the authority of the head of the unit, the Leading Head Porter takes part in the drawing-up of the instructions concerning the reception of the general public and security checks and oversees their implementation. To fulfil this task he has authority over all the head porters and deputy head porters.

c) The Parliamentary Logistics Department

This department consists of three units: *publishing and stationery, general means* and *transport*.

- *The Publishing and Stationery Unit* is in charge, subject to tasks given to other departments, of purchasing and allocating equipment, stationery and services that are necessary to the operation of the Assembly and the carrying-out of the office of M.P.; of publishing all parliamentary, institutional and administrative documents.
- *The General Means Unit* manages parliamentary telephone contract plans and the Assembly's telephone reception platform; postal mail; the administration of the restaurants and bars located and the Residence in the *Jacques Chaban-Delmas* building.
- *The Transport Unit* deals with all matters regarding M.P.s' travel and in particular their travel cards; making reservations for M.P.s for train and plane tickets necessary in the carrying out of their office. It is also in charge of motor transport for M.P.s and civil servants. To this end, it manages an automobile service whose head is responsible for overseeing the drivers and vehicle maintenance.

d) The Budget, Financial Monitoring and Procurement Department

This department is made up of three units: treasury, procurement rules and monitoring, budget and management monitoring.

The director of the department, the Treasurer of the National Assembly, answers to the *Questeurs* regarding the funds placed under his authority. He is assisted in his position by the Head of the Treasury Unit who has the role of deputy treasurer. They are both bound by strict confidentiality requirements.

- *The Treasury Unit* manages general and additional accounting; checks the validity, of payment orders; oversees expenditure payments and income titles; manages tenders; covers all questions regarding income and loans.

– *The Procurement Rules and Monitoring Unit* is tasked with studying the regulatory provisions concerning the public procurements of the National Assembly; with studying and preparing, in collaboration with the departments concerned, *Questeurs'* decisions regarding procurement and the correctness of the procedures; with monitoring the implementation of tenders, as well as managing any litigation that may arise. To this end, it is kept informed by the other departments of the National Assembly concerning any pre-litigation situation. It is also tasked with the management of other cases of litigation, upon the request of the concerned departments; with answering questions of a legal nature which are asked by other departments.

– *The Budget and Management Monitoring Unit* is in charge of preparing and implementing, along with the departments in charge of managing funds, the initial budget plan of the National Assembly and applying any modification that may be subsequently adopted; monitoring budgetary expenses and engagements; keeping the budgetary accounts; monitoring management.

e) The Financial and Social Management Department

This department is made up of 2 units: parliamentary financial management and social benefits and salaries.

– *The Parliamentary Financial Management Unit* is in charge of disbursing M.P.s' allowances. It also manages funds allocated to parliamentary secretariats and staff that are privately recruited but paid out of public funds, as well as funds allocated to political groups and to the Association of Chairmen of Political Groups.

– *The Social Benefits and Salary Unit* is in charge of social benefits, pensions and retirement.

f) The Buildings and Heritage Department

This department manages the moveable and immovable assets of the National Assembly and assists the authorities of the Assembly in the field of project management. To this end, it is in charge of:

– proposing the planning for new building works, and works of renovation, maintenance, conservation, restoration and decoration; of ensuring the feasibility and the timing of each planned operation, of proposing its programme and assessing the provisional financial burden as well as of proposing the process with which it will be carried out;

– managing all the contracts dealing with the studies for and the carrying out of, such operations and, if need be, of studying and preparing the *Questeurs'* decisions pertaining to the public procurement markets dealing with moveable and immoveable heritage as well as ensuring their proper implementation; of preparing and implementing the department's budget as well as the accountancy operations and of applying a management monitoring process;

– ensuring the oversight of external contracting authorities and of the delivery of the work;

– overseeing the architectural aspect of the work; keeping the databases on the patrimony and the property files and managing the management software for the operations concerning moveable and immovable assets; implementing the purchasing and maintenance policies concerning works of art;

– providing services to the occupiers of the buildings and ensuring a number of routine maintenance works; of managing, along with the other departments concerned, the audiovisual equipment.

2. – JOINT DEPARTMENTS

a) The Information Systems Department

The tasks of this department are:

– the drawing-up of the technical studies necessary for the development programme concerning the computer and technological means necessary for the automated processing and transmission of information and documentation; the design and the creation, in collaboration with the concerned departments, of management software and its maintenance; the conception and the creation, along with the Communication and Multimedia Information Department of legislative applications and documentaries and their maintenance;

– the drawing-up of an investment plan and proposals for the choice of material; the use and the maintenance of central and network information systems; the maintenance of the equipment of each department;

– the training in new technologies of the M.P.s, of their assistants and of civil servants; the technological coordination of the actions of the department in the new technology area;

– the study of organizational problems linked to their development; the carrying-out of technical studies in the field of technological assessment and decision-making; the necessary assistance to the departments and to the political groups in the defining and implementation of their own plans regarding computing and office automation; the technical support to access documentary databases.

b) The Human Resources Department

This department, which is tasked with managing the staff of the National Assembly, has three units: *administration and labour relations*; *prospective management and training* and *recruitment and work conditions.*

The director of the department is responsible for relations with the professional groups which are set up amongst civil servants. Each of the heads of unit is in charge of following the human resource management of one or several categories of civil servants.

– *The Administration and Labour Relations Unit* is tasked with studying the statutory provisions pertaining to salaries and to working conditions; the drawing-up of individual decisions; making individual and regulatory instruments known; internal communication; occupational medicine; the holding of professional elections; the secretariat of the dialogue commission.

– *The Prospective Management and Training Unit* is in charge of the prospective management of staff, positions and skills; the compiling of individual professional projects; career management; defining and implementing an internal and external mobility policy; establishing and implementing a professional training plan; the preparation for external competitive examinations.

– *The Recruitment and Work Conditions Unit* deals with the study of provisions pertaining to recruitment and work conditions; the organization of competitive examinations and the recruitment of contract staff; the management and reception of trainees in the departments; the secretariat of the Health and Safety Committee; the organization of the preventive medicine.

File n°72

The Table Office

Key Points

The activities of the Table Office are centred on the plenary sitting: its preparation, its running and the follow-up. To this end the Table Office is, in a general way, in charge of the procedure and the implementation of the Rules of Procedure. However, it is also involved in the running of standing committees both as regards their make-up and their proceedings.

In advance of the plenary sitting, the Table Office contributes to its preparation by manning the secretariat of the Conference of Presidents, which is the body of the Assembly which draws up its agenda and organizes the debates. The Table Office receives, lays out and classifies amendments. It also prepares the President's file which is used as the guideline for discussions in plenary sitting. It organizes the sittings given over to questions.

During the plenary sitting, the Table Office monitors the time limits for speeches, manages the sittings given over to questions and records the decisions of the Assembly. It assists the President during the plenary sittings by providing him with information useful to the resolving of any problems concerning the Rules of Procedure which may arise.

After the plenary sitting, it draws up the texts decided upon by the debates in the Assembly and notes, in the form of 'precedents', all that could contribute to the creation, within the activity of the Assembly, of statutory or constitutional jurisprudence. It also keeps statistics linked to parliamentary activity.

☞ *See also files 26, 36, 37 and 44*

The Table Office includes three units:

– The Plenary Sitting Unit which includes, under the authority of two unit heads, six advisers ,three deputy advisers and six secretaries;

– The Law Unit which is made up of one head of unit, two advisers, three deputy advisers and two secretaries;

– The Questions and Vote Unit which is led by a unit head and is also made up of six deputy advisers and four secretaries.

In addition, the Table Office includes nine porters and twenty-four ushers who carry out their duties in the Chamber or in the adjoining rooms.

I. – THE PLENARY SITTING UNIT

The activity of the Plenary Sitting Unit may be divided into six categories: the drawing-up of the agenda and the preparation of debates, legislative procedure, monitoring and assessment procedures, various procedures linked to the make-up of the Assembly and to appointments within different bodies, statutory and constitutional jurisprudence and the preparation of draft replies to certain communications addressed to the President as well as the drawing-up of memoranda and various documents.

1. – THE DRAWING-UP OF THE AGENDA AND THE PREPARATION OF DEBATES

a) The Secretariat of the Conference of Presidents

The Conference of Presidents meets each week during the session. It is chaired by the President of the National Assembly and is made up of the six vice-presidents, the chairmen of political groups, the eight chairmen of committees, the Chairman of the European Affairs Committee, the General *Rapporteur* of the Finance Committee and the Minister in Charge of Relations with Parliament. It draws up the agenda for the Assembly and organizes the debates.

The Plenary Sitting Unit services the secretariat of the Conference of Presidents. It calls the meetings of the Conference of Presidents, prepares them and draws up the minutes of such meetings.

Before each meeting, it makes contact with the Minister in Charge of Relations with Parliament to check on the agenda which will be put before the Conference of Presidents by the minister for the weeks reserved for Government business.

In collaboration with the political groups and the standing committees, it draws up a draft agenda for the weeks reserved for parliamentary initiative (the so-called "Assembly" week and that reserved for the assessment of public policies and the monitoring of Government action.

It makes a suggestion for the organization of the general discussion of bills or, if need be, an overall time schedule in the case of the implementation of the set time limit debate procedure. It also puts forward a proposal for the organization of debates included on the agenda.

It also prepares files for the President on all matters which are likely to be discussed.

b) The Organization of the Discussions in Plenary Sitting

The Plenary Sitting Unit oversees the correct organization of speeches during both the discussion of bills and during the debates which take place in the plenary sitting.

It calculates the allotment of speaking time between the political groups, which depends upon their size, taking into account the overall time for discussion decided upon by the Conference of Presidents. It informs the political groups of its decision.

It records M.P.s requests to speak and draws up, under the authority of the President, the order of speakers.

2. – LEGISLATIVE PROCEDURE

The unit carries out its duties at every stage of procedure.

a) The Tabling of Bills

In order to be tabled, Government and Members' bills and parliamentary reports are received by the Plenary Sitting Unit. It provides every one with a registration number which means that each document can be identified during the entire procedure. It draws up, at the end of the final sitting of the day, a list of all the documents which have been tabled that particular day.

It also mans the secretariat of the *Bureau's* delegation in charge of examining the financial admissibility of Members' bills in accordance with article 40 of the Constitution which prohibits parliamentary initiatives which would have the effect of creating or increasing an item of public expenditure or which would diminish public resources.

Except in cases when an ad-hoc committee is set up, the Plenary Sitting Unit, under the authority of the President to whom disputed cases are referred, decides to which standing committee the tabled bills must be sent.

b) The Preparation of the Plenary Sitting

The Plenary Sitting Unit records, lays out, arranges the printing of and distributes the procedural motions –preliminary rejection motion or motion of referral to committee – which may be tabled on each bill.

It draws up the list of speakers who will participate in the general discussion of bills according to the lists transmitted by the groups.

After having requested the advice of the Chairman of the Finance Committee on the financial admissibility of amendments initiated by Parliament, the Plenary Sitting Unit records and lays out the amendments so that the discussion in plenary sitting may be correctly organized. The recorded amendments are then placed on-line on the site of the National Assembly

The Plenary Sitting Unit then prepares the "President's File", including a number of formal expressions (formulae) which structure the running of the debate and which are read out by the chairman of the sitting. The amendments are listed, article by article, according to the statutory instructions which decide the order in which they will be called and voted upon.

In addition, the Plenary Sitting Unit puts together the 'Yellow Booklet' which retraces the running of the examination of bills and debates included on the agenda of the plenary sitting and which is distributed to M.P.s and placed on-line on the site.

c) The Running of the Plenary Sitting

During the plenary sitting, the Plenary Sitting Unit is seated behind the President on the "*Plateau*". Its first task is to constantly keep the President's file up-to-date. The list or the order of speakers may be modified. New amendments or sub-amendments

may be tabled and it may be necessary to lay them out and include them in the pre-organized file.

In addition, the Plenary Sitting Unit puts together and arranges the reproduction of bundles of amendments listed by the order in which they are called. It distributes them to M.P.s during the discussion.

The Plenary Sitting Unit also has the task, at all times, of providing the means to resolve problems concerning the Rules of Procedure which may be raised during the course of a plenary sitting. It does this in collaboration with the "head of the *plateau*" – the Secretary General of the Assembly and the Presidency, the Director General of Legislative Departments or the Director of the Table Office – who is in charge of directly assisting the President.

3. – MONITORING AND ASSESSMENT PROCEDURES

The Plenary Sitting Unit manages certain of the procedures of parliamentary monitoring in plenary sitting: confidence votes in Government, debates preceded or not by a Government statement and the discussion of non-legislative initiatives (draft resolutions).

a) Confidence Votes in Government

When a censure motion is tabled, the Plenary Sitting Unit oversees the application of the time limits set by the Constitution and checks that the list of signatories corresponds to the number required by article 49 of the Constitution.

b) Debates

In carrying out its monitoring activities, the National Assembly holds numerous debates. Certain of these follow a Government statement and may lead to a vote which is not considered a censure motion. Others, generally organized during the weeks given over to parliamentary initiative, may take place upon the request of a group, of a standing committee or an assessment and monitoring commission and may deal with a very precise topic or with the conclusions of a fact-finding mission or the application of a law. They may, at times, take the form of questions to a minister.

The Plenary Sitting Unit organizes the debate according to the rules laid down by the Conference of Presidents whether the debates are held in the Chamber or in the *Salle Lamartine*..

c) Draft Resolutions

Three types of resolution may be tabled to the Plenary Sitting Unit:

– Draft resolutions aiming at the setting-up of a committee of inquiry, for which the Plenary Sitting Unit may propose the organization to the Conference of Presidents when they are included on the agenda. Nonetheless when they are initiated by an opposition or minority group using its right to one such request per ordinary session, as laid down by article 141 of the Rules of Procedure, they are automatically included on the agenda of a monitoring week and the discussion is limited to the explanations of votes by the groups. In all cases,

the Plenary Sitting Unit manages the exchange of communications between the President of the National Assembly and the Minister of Justice which are aimed at ensuring the admissibility of the draft resolution. The Plenary Sitting Unit also carries out the coordination with the relevant standing committees.

– Draft European resolutions: the Plenary Sitting Unit informs the standing committees and, if need be, the Government, of the various statutory time limits concerning their examination, the mechanisms for their adoption and their eventual inclusion on the agenda. The Plenary Sitting Unit proposes, if necessary, the organization of debates in plenary sitting which can follow on from the draft European resolutions.

– Draft resolutions tabled in accordance with article 34-1 of the Constitution. These are transmitted by the Plenary Sitting Unit, as soon as they are recorded, to the Office of the Prime Minister but the Government has the possibility of declaring them inadmissible. The Plenary Sitting Unit ensures that the time limits and the conditions for admissibility provided for by the Rules of Procedure are adhered to.

4. – PROCEDURES CONCERNING THE APPOINTMENT OR THE RENEWAL OF M.P.S WITHIN THE VARIOUS PARLIAMENTARY AND EXTRA-PARLIAMENTARY BODIES

The Assembly appoints the members of the *Bureau* and renews them at the opening of each session with the exception of the session of the renewal of the Assembly. The President of the Assembly however is elected for the entire term of Parliament. In addition, at the beginning of the Parliament or during the session, certain M.P.s are called to sit on various bodies. These appointments follow a variety of procedures but all nonetheless are organized by the Plenary Sitting Unit:

At the beginning of the session, the Plenary Sitting Unit prepares the timetable for the operations of the opening of the session according to the constraints of the agenda, as well as the operations for the appointment and setting-up, in plenary sitting, of the *Bureau*.

As regards the appointment of M.P.s called to sit within various bodies, the Plenary Sitting Unit is mainly involved in two ways:

The Assembly, through its President or through its standing committees, may be called to appoint an M.P. or an eminent figure to an “extra-parliamentary” body, i.e. a non-parliamentary body to which one or several M.P.s are appointed in their institutional capacity. The Plenary Sitting Unit receives the candidacies, prepares the appointment file and when an appointment is made, it ensures that it is published and transmits it to the competent authorities and to those directly concerned.

In addition, in accordance with ordinary law or with article 13, paragraph 4 of the Constitution, the relevant standing committees of the Assembly are sometimes requested to give their opinion on the appointments which the Government or the President of the Republic envisage. In this case, the Plenary Sitting Unit ensures the coordination of the procedure with the secretariats of the standing committees and informs the Prime Minister of the opinion given following the hearing organized by the standing committee.

In addition, the Plenary Sitting Unit receives the political statements of the political groups, if need be their declaration of membership of the opposition as well as the requests for membership and resignations of their members. It makes all such information public.

5. – THE DRAWING-UP OF "PRECEDENTS"

The Plenary Sitting Unit notes and comments upon all those matters which, during the plenary sitting, concern the application of the Constitution, institutional acts, the Rules of Procedure or the General Instructions of the *Bureau*.

This jurisprudence of parliamentary practice is kept article by article. It, of course, means that the Table Office has substantial catalogued archives which serve as a kind of "memory" of the Office but also that, through the repetition of the same scenario, a tradition is created whereby the President may use such documents to take or to justify decisions.

6. – REPLIES TO COMMUNICATIONS AND THE DRAWING-UP OF VARIOUS MEMORANDA

The Plenary Sitting Unit is requested in the preparation of draft replies to various letters and electronic mails which are addressed to the President of the National Assembly and which concern the preparation and the running of the plenary sitting, as well as, more generally, the organization of legislative work.

In addition, it drafts memoranda on the different areas of its remit and draws up information documents pertaining to the running of the plenary sitting and the legislative procedure.

II. – THE LAW UNIT

The tasks of the Law Unit may be divided into two categories: those which are linked to the plenary sitting and which follow its rhythm and those which are not directly dependent on the plenary sittings of the Assembly.

1. – THE PASSING OF LEGISLATIVE BILLS

The main aim of the Law Unit is, as its name suggests, to follow the passing of legislative bills. This task is carried out throughout the process of the passing of a bill.

a) Before Their Examination in Plenary Sitting and as of Their Inclusion on the Agenda

The Law Unit is in charge of the prior layout of the Government and Members' bills tabled and thus ensures the respect of the norms for presentation which are specific to the National Assembly. In particular it carries out the 'numbering' of the bills which consists of providing numbers to the paragraphs of each article of the text so that amendments can be more easily inserted. This 'numbering' is carried out at every stage of the procedure where a bill can be amended.

Legislative texts – Government bills, Members' bills and amendments – are subjected to a prior examination by the Law Unit both at the tabling stage and after their adoption by a committee in preparation for their discussion in plenary sitting. As

regards content, the provisions and the references to prior bills are checked so as to ensure the coherence of the bill to be passed. The Law Unit is also in charge of examining whether the bill to be discussed, falls within the ambit of statute, so as to enable the President to rule on a potential inadmissibility based on such a reason. This possibility is very rarely used. As regards form, particular attention is paid to the correct typography, punctuation, spelling, grammar and numbering of the bill.

When such verifications (which require a knowledge of the art of drafting legislative texts) involve modifications other than purely formal ones, such changes are suggested to the M.P.s, the Government and to the committees so that they may rectify their amendments or table new ones.

b) During Plenary Sitting

The Law Unit follows the discussion of the bills in plenary sitting.

Its first task is to monitor the speaking time and to provide the President and the speakers with the necessary indications to remain within the time limits.

It also records the decisions of the Assembly on articles and amendments.

c) At the End of the Plenary Sitting

On the basis of the decisions taken by the Assembly which the Law Unit has recorded, it draws up the bill which is the result of such deliberations in a digital form and checks it.

The bill which has been passed is then transmitted, in provisional form, to the General Secretariat of the Government (SGG), to the minister concerned and to the Senate. After a final verification, the Law Unit has the bill printed and distributed in the format of a "*petite loi*" (bill which has yet to be passed in the Senate).

Two copies on vellum paper of this text, which is deemed authentic, are signed by the President of the National Assembly and are given the seal of the National Assembly. One is transmitted to the General Secretariat of the Government and the other is placed in the archives of the National Assembly.

When the definitive text is passed by the National Assembly after the "shuttle" with the Senate, the Law Unit drafts this definitive text and specifically reintroduces the provisions which were previously in conformity or unmodified and it coordinates the numbering of the articles.

2. – PERMANENT TASKS

a) Publications

The Law Unit produces certain publications for the National Assembly.

It is in charge of publishing the Rules of Procedure and its successive modifications as well as the General Instructions of the *Bureau*. It also publishes the Rules of Procedure of the Congress.

It is also responsible, along with the Law and Legal Drafting Unit of the Senate, for the drawing-up of the *Recueil des pouvoirs publics*, which is a collection of texts

concerning the constitutional bodies of the Republic (the executive power, Parliament, the Constitutional Council, the judicial authority, the Economic, Social and Environmental Council).

c) The Interpretation of Constitutional and Statutory Texts

The Law Unit contributes, from a parliamentary point of view, to the interpretation of constitutional, institutional and statutory texts. In parallel with the Plenary Sitting Unit, it participates in the drawing-up of "precedents" in the areas which fall especially within its remit. This is particularly the case for the application of articles 34 and 37 of the Constitution which deal with matters for statute and matters for regulation.

III. – THE QUESTIONS AND VOTES UNIT

The Questions and Votes Unit has four main tasks: managing the procedures concerning written and oral questions addressed by M.P.s to the Government; organizing the votes which take place at the National Assembly and a the Congress; managing he procedures pertaining to the make-up and the proceedings of standing committees; providing information and statistics on the plenary sitting and on parliamentary activity.

1. – WRITTEN AND ORAL QUESTIONS ADDRESSED TO GOVERNMENT

The Questions and Votes Unit centralizes the written questions which M.P.s may ask ministers. It records them, checks their admissibility and their format, summarizes their subject and transmits them every week for publication to the *Journal officiel.* At the same time, the unit receives from the Government the answers to such questions and ensures their publication in the *Journal officiel*. It also transmits to the Government the list of questions which have not been answered and which the M.P.s or groups wish to renew or highlight.

The unit is also in charge of the organization of the sittings of oral questions without debate which are held on Tuesday and Thursday mornings during the monitoring weeks. The unit receives the questions which the M.P.s wish to ask during the sitting, transmits them to the Government, prepares the sitting on the basis of the order of appearance of the ministers provided by the Government and oversees the correct running of the sitting.

In addition, the unit also sets the order of appearance of the groups for the Government question time sittings which take place on Tuesday and Wednesday afternoons at 3pm.

2. – VOTES

The Questions and Votes Unit is in charge of the running of *public ballots* which may be organized at the National Assembly.

Such votes are by an electronic system and take place in the Chamber or in the neighbouring rooms and their results are published. They may be held during the consideration of a bill, upon the request of the chairman of the sitting, of the

Government, of the lead committee or of the chairman of a political group or his representative. They may also be decided upon by the Conference of Presidents on an entire text: they are then referred to as “formal votes” and are usually held after Government question time. In addition, public ballots may be held in accordance with certain constitutional procedures such as when the Constitution requires a specific majority (censure motion, passing on final reading of a Government or Member’s institutional bill) or when the Government makes a bill an issue of confidence or requests a vote on one of its statements.

For these ballots, the unit centralizes the proxy votes which M.P.s may receive from one of their colleagues and then, under the authority of the chairman of the sitting, moves to the vote requested. Afterwards it publishes its result.

If Parliament convenes in Congress for the approval of a constitutional revision, the unit is also in charge of the preparation and organization of the vote. In this case it works in direct collaboration with the Vote Unit at the Senate.

Lastly, the Questions and Votes Unit is in charge of the *secret ballots* required when votes deal with personal appointments: on the basis of the candidacies received by the Plenary Sitting Unit, the Questions and Votes Unit oversees the running and the counting of such ballots.

3. – FOLLOWING COMMITTEE PROCEEDINGS

The unit is in charge of the initial composition of committees and other monitoring bodies of the Assembly at the beginning of a term of Parliament and of their renewal at the opening of each session. It prepares the file for the election of the chairman and *Bureau* of each body.

During the whole term of Parliament, it receives the appointments and resignations of members of these bodies and makes sure all such information is made public.

Its remit also includes the composition of non-permanent bodies such as *ad-hoc* committees, committees of inquiry and fact-finding missions of the Conference of Presidents and fact-finding missions common to several committees. It is also in charge, along with the Senate, of the composition and organization of the joint committees.

It provides information and makes it public, on a daily basis, concerning the holding of all the meetings of the aforementioned bodies, records the presence of M.P.s at the meetings of standing committees in accordance with the regulatory provisions and follows the proceedings of the standing committees so as to draw up statistics on their work.

4. – INFORMATION CONCERNING THE PLENARY SITTING AND THE LEGISLATIVE AND MONITORING ACTIVITIES OF THE ASSEMBLY

The Questions and Votes Unit centralizes a large amount of information and provides details and draws up statistics on the plenary sitting and, more generally, on the legislative and monitoring activities of the Assembly.

The unit is in charge of the drawing-up of the "*Feuilleton*" which is a publication which brings together, every day of plenary sitting, all useful information on the activity of the Assembly, such as the agenda, the committee meetings or the publication of parliamentary documents.

In collaboration with the political groups, it allots seats to the M.P.s in the Chamber.

File n°73

“Operational Poles”

Key Points

A major reform of the departments of the National Assembly was introduced in 2006 taking into account the consequences of the growing importance of monitoring and assessment activities.

From 2006 on, the structures in charge of legislative matters, on the one hand, and those dealing with monitoring and studies, on the other, were no longer to be separate but merged in six large operational poles with the following thematic briefs: legal affairs, cultural and social questions, economics and scientific assessment, public finances, European affairs, international affairs and defence.

☞ *See also files 24, 48, 49, 50, 52, 53 and 54*

I. – THE 2006 REFORM OF THE ORGANIZATION OF DEPARTMENTS

Until 2005, the departments dealing with legislative activities, on the one hand, and assessment and monitoring on the other, were organized in a classical “vertical” system which can be found in many Parliaments:

- **The Committees Department** carried out the secretariat of the six standing committees and the commissions of inquiry;
- **The Studies and Documentation Department** carried out various specific studies mainly at the request of individual M.P.s;
- **The Research and Assessment Department** was in charge of the secretariat of the Parliamentary Office for Scientific and Technological Assessment, of drafting memoranda and of collecting the Assembly’s documentation in the scientific and technological field;
- **The International Relations Department** also carried out studies on subjects linked to international relations and comparative law (outside the European Union). It set up and coordinated links with foreign Parliaments (mainly through the friendship groups) and carried out the inter-parliamentary cooperation policy drawn up by the political authorities of the National Assembly. It also dealt with the attendance of National Assembly delegations at various international organizations;

– **The European Affairs Department** was responsible for the secretariat of the European Union Delegation at the National Assembly, for following bilateral relations between the National Assembly and European states as well as for the documentation concerning these states. It also carried out studies on European countries and their legislation. This department is the only one whose general brief and organization has remained almost unchanged because, as it brings together the secretariat of a body of the Assembly (the European Union Delegation which became the Committee in Charge of European Affairs with the constitutional reform of July 23, 2008) and a unit in charge of studies, it already possessed an organizational structure very similar to that decided upon for the future departments.

Generally speaking, the fact that these different departments tended to work in isolation placed a brake on the essential development of monitoring and assessment activities. It also represented an obstacle to the best use of the means made available in the parliamentary budget. This separation made the appointment of advisers to commissions of inquiry and fact-finding missions more difficult and advocated against any combining of existing resources.

The new organization of the departments is based on a redistribution of the briefs of each of the five former departments between six departments corresponding to the six great "horizontal operational poles"; legal affairs, cultural and social questions, economics and scientific assessment, public finances, European affairs, international affairs and defence.

So as to provide a clear identity to the activities of monitoring and assessment, the principle of the organization of these departments in units with their own staff was established. In fact the directors have the responsibility of organizing the distribution of tasks between units so as to harmonize the workload of the civil servants of the entire department. Thus each of the new departments has, at least, one committee or commission secretariat and a unit in charge of monitoring and legislative studies. These departments carry out the secretariat of commissions of inquiry and fact-finding missions set up by the Conference of Presidents within their relevant field.

II. – PRESENTATION OF THE "OPERATIONAL POLES"

On the basis of the principles set out above, six "operational poles" were established on January 1, 2006:

– **The Legal Affairs Department** is in charge of following legislative work, monitoring and studies in electoral and constitutional law matters, in issues concerning the Rules of Procedure of the National Assembly and in the fields of judicial organization, administrative, criminal and civil law, civil liberties, the civil service and territorial units. It includes two units:

- The secretariat of the Constitutional Law, Legislation and General Administration of the Republic Committee;
- The Studies and Monitoring Unit for Legal Affairs which is, in particular, in charge of the secretariat of the Commission for Women's Rights.

– **The Cultural and Social Questions Department** is in charge of following legislative work, monitoring and studies in matters concerning education, research, youth, sports, artistic and cultural activities, communication, intellectual property, work and labour relations, vocational training, health and solidarity, elderly people, handicapped people, family issues, social security and social integration and equal opportunities. It has three units:

  - The secretariat of the Social Affairs Committee;
  - The secretariat of the Cultural Affairs and Education Committee;
  - The Monitoring and Studies Unit for Cultural and Social Affairs which is, among other things, in charge of the secretariat of the Assessment and Monitoring Mission for the Laws Governing Social Security (MECSS).

– **The Economic and Scientific Assessment Department** is in charge of following legislative work, monitoring and studies in matters concerning agriculture, fishing, energy, industry, applied research and innovation, consumption, internal and external trade, post and electronic communications, tourism, town planning and housing, regional development, construction, transport, equipment, infrastructures, public works, the environment and hunting. It has four units:

  - The secretariat of the Economic Affairs Committee;
  - The secretariat of the Sustainable Development, Spatial and Regional Planning Committee;
  - The secretariat of the Parliamentary Office for Scientific and Technological Assessment;
  - The Monitoring and Studies Unit for Economic Affairs.

– **The Public Finance Department** is in charge of following legislative work, monitoring and studies in matters concerning state and local finances, finance laws, budgetary implementation and taxation. It has three units:

  - The secretariat of the Finance, General Economy and Budgetary Monitoring Committee;
  - The secretariat of the General *Rapporteur* of the Budget;
  - The Monitoring and Studies Unit for Budgetary, Fiscal and Financial Affairs which is, in particular, in charge of the secretariat of the Assessment and Monitoring Mission (MEC).

– The European Affairs Department has two units:

  - The secretariat of the Committee in Charge of European Affairs;
  - The European Studies and Comparative Law Unit.

  It is also in charge of the secretariat of the National Assembly delegations to the Euro-Mediterranean Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe and the Parliamentary Assembly of the Western European Union.

– **The International Affairs and Defence Department** is in charge of following legislative work, monitoring and studies in matters concerning international relations and the general organization of defence. In addition, it implements and coordinates the relations and cooperation programmes between the National Assembly and the Parliaments of other countries outside the European Union. It has five units:

- The secretariat of the Foreign Affairs Committee;
- The secretariat of the National Defence and Armed Forces Committee;
- The International Parliamentary Assemblies Unit;
- The Inter-parliamentary Cooperation Unit;
- The Parliamentary Relations and International Studies Unit.

File n°74

The Communication and Multimedia Information Department

Key Points

The tasks carried out by the Communication and Multimedia Department are aimed at better informing citizens on the role of the National Assembly, its proceedings and its way of operating.

On account of developments both in information techniques and in the expectations of the general public in the field of communication, this department has seen its role greatly evolve in recent years and this continues to be the case. Such developments have, in particular, led to a decrease in the use of traditional paper-based media which has been increasingly matched by an increase in digital aid usage.

At the same time the National Assembly, like all public institutions, has been attempting to open up more to the general public and in particular to young people.

From an administrative point of view, this department belongs to the "legislative" departments and is thus placed under the authority of the Secretary General of the Assembly and of the Presidency. It has three units: press, multimedia information and institutional communication.

This department regularly delivers a report on its activities to the delegation of the *Bureau* of the National Assembly in charge of communication and the press. The latter, which is chaired by one of the six vice-presidents, is in charge of approving the main directions for institutional communication policy.

☞ *See also files 62 to 64 and 66*

I. – THE PRESS AND AUDIOVISUAL UNIT

The Press and Audiovisual Unit includes around thirty parliamentary civil servants all under the authority of a head of unit.

In addition to its task of receiving and accrediting newspaper, web and television journalists, this unit informs journalists quickly and precisely of the proceedings of the National Assembly and its various bodies either through its publications (bulletin, technical files on the legislative work in progress, factual press communiqués etc.) or through certain of its staff whose job it is to compile official reports on the non-public proceedings of committees and delegations.

This unit, which must avoid all public positions or comments on current political issues, works, along with other bodies in the National Assembly, e.g. the Presidency and the political groups, in the field of press relations.

Three teams operate within this unit: a team in charge of the managing of images of the Assembly's debates on-line, a "camera" crew and a team of photographers.

Since September 2009 a team of civil servants is in charge of managing the on-line images of the Assembly's debates (Gilda). It indexes and edits images of the plenary sitting and of committee meetings broadcast on internet thus providing easier access to debates and allowing the downloading of parts of debates which are chosen by internet users. It deals with the video portal which allows users to watch all of the proceedings which were recorded during the XIIIth term of Parliament. It is also responsible for the digitization of the back-catalogue of old video recordings.

The camera crew creates and edits films of the various events and exhibitions organized by the National Assembly. Such audiovisual documents are used for a variety of purposes, e.g. the film of the annual meeting of the "Children's Parliament" is sent to each of the 577 classes which take part in the event every year. Several of these films are available on the website of the National Assembly.

The "photo" team's job is to take the official photographs of the National Assembly. Thus, at the beginning of each term of Parliament, it produces a portrait photograph of each M.P. for the "Official Directory of Portraits and Notes on Members" and for the file listing individual M.P.s on the site of the National Assembly. During the parliamentary term the team carries out any photo shoots requested by the Presidency or the Protocol Department, particularly during visits of foreign dignitaries. It is also in charge of photographing the meetings of various bodies of the National Assembly. Such pictures are often used, for example, to illustrate the "Annual Activity Report". In addition, its tasks include the photographing of the different "heritage" sites in and around the *Palais Bourbon*. This photo bank has helped develop the photographic collection of the National Assembly which is managed by the Institutional Communication Unit.

II. – THE MULTIMEDIA INFORMATION UNIT

Twelve parliamentary civil servants, including two computer specialists, work for this unit, which is mainly in charge of the site of the National Assembly. It is responsible for the editorial management of the site. The head of the unit is the site's webmaster.

The unit supervises all the information provided to it by the other departments of the Assembly and places it on the site. It oversees, along with the Information Systems Department, the correct operation of the computer programmes which automatically run the site. This task may include checking the data provided concerning M.P.s, parliamentary proceedings, official reports on the work of the Assembly and its bodies, legislative files, written or oral questions and amendments. Along with other departments, it also helps create the visuals which illustrate the site and is at the basis of its technical and graphic modernization.

This unit also manages the participation of the National Assembly on social networks (Facebook, Twitter etc.). It publishes an on-line weekly newsletter dealing with future events and another "*rétrolettre*" or "backletter" which gathers together all

the main events of the preceding week. It provides the editorial comment on the home page of the site as well as creating the educational sections which explain the procedures and the role of the bodies of the Assembly, etc.

In addition, it manages two other sites: one for M.P.s and their assistants and one for the staff of the Assembly. These two sites, on top of general information taken from the main site, include items which only concern the audience for whom they are designed.

Besides this main task, the unit also manages the internet user contribution sections and replies to information requests on the Assembly which it receives in a variety of ways: by post, telephone or by electronic mail. Since 2007, the mandate of the Publications Unit has been transferred to the Multimedia Information Unit.

III. – THE INSTITUTIONAL COMMUNICATION UNIT

This unit, which is made up of seventy parliamentary civil servants, has three main tasks.

It is, first of all, in charge of the communication publications of the Assembly. In this field, the unit works, when necessary, in collaboration with external communication agencies recruited by public tender.

Some publications are regular or permanent: the annual activity report, today in digital form, the communication aids provided to M.P.s (e.g. the educational kit composed of several boards describing the role and organization of the Assembly which are used by M.P.s visiting schools in their constituency to illustrate their talks), to foreign guests or to people visiting the Assembly (brochures on the National Assembly or the library). In addition there are works on the history or the heritage of the Assembly (the *Hôtel de Lassay* or the *Palais Bourbon*) as well as books aimed at children such as the cartoon strip "*À la découverte de l'Assemblée nationale*" ("Discovering the National Assembly"), fact-files for the Heritage Days on the patrimony of the Assembly or its running, brochures summarizing information and budget reports etc.

Other publications deal with more specific subjects.

Since its creation in 2005, the Publishing Mission has aimed at publishing a wide range of books on the National Assembly which cover everything from a work of reference to a work of vulgarization passing through illustrated publications and children's books. Its aim is to have parliamentary history and the running of the National Assembly better known by the general public through books which are accessible and sold at a reasonable price. Most of the works are created in partnership with established publishers which ensures that they gain national distribution in the network of bookshops.

For instance, publications include historical and commemorative volumes (Zola in the Panthéon, homage to Aimé Césaire, homage to Philippe Séguin), works on heritage (a special edition of the review "*Beaux Arts*" on the National Assembly, *A Short History of the* Palais Bourbon, *Rousseau and the Revolution*), books of vulgarization (*An Anthology of Parliamentarian Poets, the National Assembly* in the

collection, '*Received Ideas*', '*If the* Palais Bourbon *Were Told as a Story*'), biographies of parliamentarians (Clemenceau, Jaurès, Briand, Edgar Faure, Victor Hugo, Lamartine), children's books (*Marianne and the Mystery of the Assembly*, *the ABC of the Assembly*).

The Institutional Communication Unit is also in charge of the organization of certain events or exhibitions which take place under the auspices of the Assembly. All such events are publicized on the site of the National Assembly when they are open to the general public.

Some events occur regularly, such as the annual meeting of the Children's Parliament, the Political Book Day, or the National Heritage Days on the third weekend in September.

The unit is also in charge of welcoming visitors to the *Palais Bourbon* and of arranging the guided tours from Monday to Saturday. This task is carried out by a team of around fifty specially trained Assembly staff who also have the task of overseeing the access to the rooms situated close to the Chamber in the so-called "sacred perimeter". They also monitor the behaviour of visitors who attend the plenary sitting in the galleries and tribunes of the Chamber.

The visits, which take place in groups of fifty, are sponsored by M.P.s who reserve them in advance. Once the visitors have passed security, they are welcomed and given a guided tour of between one and one and a half hours. A short film of around ten minutes is shown either before or after the visit. The guides are given special training which deals with both the heritage aspect of the Assembly as well as its actual daily operation. The Institutional Communication Unit is also in charge of designing the information panels situated along the route of the tour which mainly describe the various rooms encountered. Audio guides in French, English, Spanish and German are available for visitors.

Once their tour is over, groups may visit the Assembly "*Boutique*" which, although outside the actual walls of the *Palais Bourbon*, is, in fact, very close. In this shop, the general public may purchase post cards, books written by M.P.s or about the Assembly, as well as souvenirs. The *Boutique* is accessible to all and a variety of information on the proceedings of the Assembly is available there. It has the legal status of a non-profit-making organization, according to the 1901 law, and is under the administrative responsibility of the Communication Department. It works in close collaboration with the Institutional Communication Department. Its accountancy records and financial management which are drawn up with the help of an external accountancy agency are submitted, once a year, to the commission of the *Bureau* in charge of communication and press.

The unit is also in charge of running the news stand of the Assembly.

File n°75

The Library and Archives Department

Key Points

The library of the National Assembly was set up in 1796 and has been in its present premises, decorated by Eugène Delacroix, since 1835. With its 500,000 volumes and its historical collection which was mainly built up during the French Revolution and the Empire, it is one of the finest libraries in France. For almost two centuries, it has been specialized in the legal, economic, political and social fields and today it represents a modern research and consultation tool accessible to parliamentarians, their assistants, civil servants of the National Assembly and to researchers.

In 2009, the Archives Department, the history of which goes back to the origins of Parliament (as early as 1789 the Constituent Assembly had established an Archive Department whose role was mixed with that of the National Archives), was merged with the library. Today the tasks of the Archives Unit include, in addition to the management of the archives of the National Assembly, the provision of information to the general public on parliamentary proceedings dating back to the Revolution. To this aim the Archives Unit publishes the biographies of former M.P.s. It has also launched various initiatives aimed at encouraging and developing research on parliamentary law and history.

The Library and Archives Department has been developing over recent years a policy of highlighting its historical heritage and has launched a digitization programme of parliamentary debates. Certain of these activities have been carried out in partnership, notably with the National Library of France with which, since 2009, the library of the National Assembly has created an "associated pole", and with the National Archives.

I. – THE LIBRARY UNIT

The library of the National Assembly was set up in 1796 (Law of 14 ventôse, year IV or March 4, 1796) although it only moved to its present premises in 1835.

1. – THE DECORATION: A MASTERPIECE OF ROMANTIC ART

The building was constructed between 1833 and1835 in the former courtyard of the outbuildings of the *Palais Bourbon*. The architect, Jules de Joly, designed the great nave (42 metres long and 10 metres wide) to house 70,000 volumes, i.e. 20,000 more than the library then possessed.

The decoration of the ceiling was entrusted to Eugène Delacroix, who arranged the subjects of the five domes according to the library classification in use at the time. For each dome, a single theme brought together, in four pendentives, the most famous men in the disciplines reflected: in the centre, legislation; on each side, philosophy and

theology; at each end, science and poetry. At the northern and southern ends, there are two half-domes which place war ("Attila trampling Italy and the Arts") in opposition to peace ("Orpheus Bringing the Yet Barbarian Greeks the Gifts of Civilization").

It took Delacroix and his pupils eight years (1839-47) to conceive of and execute this extraordinary project.

Thus, this place of study and research is also, thanks to the genius of the artist, one of the most beautiful examples of romantic art. "*Nothing more magnificent was painted in the French school of mural painting*" wrote Charles Blanc, the great art historian in 1881.

2. – THE COLLECTION: FROM THE SHOWCASE OF THE CONNAISSEUR TO THE LEGISLATIVE LIBRARY

When it was set up, the library inherited 12,000 books which had been brought together by the Committee of Public Instruction of the Convention. They came from "literary stores" created after the sequestering of goods belonging to the clergy and to *émigrés*. It was from these same stores that the first librarian, Armand Gaston Camus, would draw in order to build up the collection until the end of the Consulate (1804). Bringing together an encyclopaedic mind and a passion for books, he attempted to wed, in his own words, "*the pleasure of the eyes to that of the mind*".

His successor, the Benedictine monk, Druon, also conceived of the library as both a means of documentation and a showcase of rare and precious pieces. By buying at public auctions, he added two exceptional documents to the old collection: the manuscript of the trial of Joan Of Arc and the *Codex Borbonicus* or Aztec calendar dating from the end of the XVth century.

From 1830 on, times changed. As the parliamentary system became stronger, the library, which was now situated close to the Chamber, had to become a working tool adapted to the needs of the legislator. In accordance with the instructions given by public authorities, the library managers had to make available for the M.P.s everything that was published, at least by French printers, in the legal, economic, social and political fields.

This rule has operated since then as far as the acquisition of books and periodicals is concerned. The technical nature of the library has had the upper hand over the love of books. However, nothing can stop the old collection from being enhanced by rare documents when they are part of political and parliamentary history. It is the reason why in recent years the collections have been enriched by manuscripts by Robespierre, Lamartine, Jaurès or Léon Blum without forgetting those which parliamentarians themselves leave to the library.

The Library is keen to emphasize the value of its ancient heritage, particularly by means of digitization and through exhibitions. The tercentenary of the birth of Rousseau in 2012 was, for example, the occasion to organize an exhibition named "Rousseau and the Revolution" in order to highlight the exceptional manuscripts of the philosopher and the artefacts pertaining to the French Revolution which are held by the library. These manuscripts have been digitized as have other works from the collection belonging to the library. They can be accessed by the general public since

they have been placed on-line on the internet site of the National Assembly and on *Gallica*, the site of the National Library of France, thanks to a partnership established between the two institutions.

3. – THE LIBRARY IN FIGURES

- 14,500 linear metres of underground shelving;
- Circa 500,000 works with an annual growth of 2,500-3,000 volumes;
- 80 incunabula (published before the XVIth century);
- 2,000 manuscripts;
- 3,000 periodicals of which 535 are still published;
- 220 French daily newspapers (including local editions);
- All the collections of parliamentary debates and documents since 1789 (on microfiche from 1881);
- Almost 2000 original posters from the great moments of the revolutions: 1789, 1848, the Commune. In addition, the library houses a collection of engravings and prints made up in particular of preparatory studies by Delacroix for his works in the *Palais Bourbon*, of Epinal prints and of various engravings concerning the history of the National Assembly;
- More than 600 medals, busts, statuettes and other objects of artistic and historical value.

To all these, must be added, access to various forms of electronic documentation (cd-roms for individual use or on networks, access to internet and numerous legal, economic and press databases), most of which can be accessed via the intranet portal of the library.

4. – A MODERN TOOL FOR RESEARCH AND CONSULTATION

The library is intended for use by M.P.s but is also open to their assistants (up to three per M.P.), the secretaries of political groups as well as the staff of the National Assembly. Senators, French MEPs and former members of the parliamentary assemblies also have access.

Scholars carrying out research requiring the consultation of works not to be found in any other library can have an access authorization on days when the National Assembly is not sitting. This authorization is valid for one month and is renewable. It is granted by the Secretary General of the Assembly and the Presidency upon the proposal of the Director of the library.

All the documents indexed since 1993 are listed in the computer catalogue, Flora, which can be consulted from computers linked to the Intranet network but also, thanks to the Extranet, from M.P.s constituencies. A project of digital retro-conversion is close to completion, in order to include the old library catalogues (1789-1920) in the computer-based catalogue. The retro-conversion of the entire catalogue from 1920-1993 is also under consideration. Its implementation will enable the consultation of the whole collection of the library by means of a single medium.

The works are made available exclusively for readers who request them from a distance and who can come and consult them in a twenty-four hour time limit.

The only people who can borrow books are:

– M.P.s;

– Senators and French MEPs;

– Former members of the parliamentary assemblies, the Consultative Assembly or the Constituent Assemblies;

– Members of staff of the National Assembly;

– The assistants paid by political groups.

Current M.P.s may also grant power of attorney to one of their assistants to borrow books on their behalf and under their responsibility.

Visitors consulting works of the Centre for Parliamentary Documentation, which is run by the Archives Unit, may have access to works of the library pertaining to parliamentary history and law. These works may be consulted on the premises of the Centre and may not be borrowed.

Loans are limited to:

– 6 volumes per person;

– A time limit of two months.

The following cannot be borrowed:

– Newspapers and reviews;

– Rare books;

– Books on direct access;

– Books published more than fifty years ago.

II. – THE ARCHIVES UNIT

The management of parliamentary archives is an institutional mission which goes back to the origins of Parliament. From the creation of the Constituent Assembly on July 9, 1789, Armand Gaston Camus, M.P. for Paris, was appointed to be its secretary and then its archivist. Until year VIII of the revolutionary calendar, the archives of the National Assembly were held with the National Archives.

The tasks of the Archives Unit include managing the archive collection of the National Assembly as well as welcoming and providing information to those wishing to obtain details of parliamentary history and of former parliamentary proceedings. In addition, the unit is involved in a digitization and outreach programme aiming to highlight old documents and has, for several years now, implemented several initiatives to encourage and develop research in parliamentary law and history.

1. – MANAGING THE ARCHIVES OF THE NATIONAL ASSEMBLY

The original and traditional task of the Archives Unit is the collecting, depositing, archiving and maintenance of all the archives of the National Assembly. It also attempts to highlight these documents.

The Archives Unit, first of all, plays an advisory and training role as regards the other departments of the Assembly. It provides them with the methods and tools necessary to help the daily management of the documents they produce with an eye to their eventual archiving. To do this the department liaises with the "archives" correspondent in each department. Then the department files the collections which have been deposited by the departments and draws up inventories.

The archivists of the National Assembly also deal with the conservation of documents. They are responsible for communicating them to the departments and the researchers who request them. A real policy of highlighting this heritage has also been undertaken for several years now (publications, exhibitions, digitization of archived documents etc.).

For several decades now the National Assembly has maintained a policy of providing documents to the National Archives. It is thus that all the legislative documents prior to 1997 have been transferred to the National Archives. These documents include the minutes of committees and the administrative archives, some of which go as far back as the XIXth century.

The archives sent to the National Archives remain available for the Archives Unit for consultation purposes.

2. – COMMUNICATING TO THE GENERAL PUBLIC INFORMATION ON PARLIAMENTARY PROCEEDINGS DATING FROM THE REVOLUTION

The Archives Unit provides assistance to those wishing to consult the archives (private individuals but also historians as well as people belonging to administration and the legal profession) who need to refer to parliamentary documents and the department's collections for their professional activities or their research work.

It receives numerous requests every day which are more and more often made by electronic mail. The most frequent requests concern preparatory work on legislative provisions, debates at the Assembly in a particular area, or access to a specific speech by an M.P. during a particular period or on a specific subject, or biographical details on M.P.s. This list is far from exhaustive.

The unit also has, on its premises, a Parliamentary Documentation Centre, open to the public, which is used by around 700 people every year. In this room it is possible to consult printed parliamentary documents (Government or Members' bills, reports etc.), official reports of plenary sittings, as well as a series of other documents such as lists of M.P.s, compilations of election platforms etc. The unit also has certain parliamentary archives which are available to the public. From among the archives kept at the National Assembly, it is possible to freely consult, in accordance with the rules set down by the *Bureau* of the National Assembly, written documents over twenty-five years old (subject to exceptions for certain types of document such as

those dealing with national defence or containing personal details for example for which the period of release may be longer).

Since the fusion of the library and the archives, those people consulting works in the Parliamentary Documentation Centre may also consult works from the library pertaining to parliamentary history and law. These works may not, however, be loaned.

Numerous archive documents and historical files have been placed on-line on the internet site of the National Assembly for example after events and commemorations, so as to allow access to as many people as possible. Thus, in order to highlight the specific role of the Parliament during the Great War, the Library and Archives Department of the National Assembly, in collaboration with that of the Senate, is preparing for the national and international commemorations of 2014, the placing on-line of the minutes of the parliamentary standing committees meetings and of certain annexed documents which have, up to now, only been seen by a few rare specialists.

3. – Compiling and publishing information on the biography of former M.P.s

The Archives Unit writes up biographical notes on former M.P.s which are to be published in the Dictionary of French Parliamentarians and published on-line on the internet site of the National Assembly. This work is carried out in collaboration with the Senate for parliamentarians who have been both M.P.s and Senators.

In order to facilitate research on former M.P.s, the unit has set up a biographical database going back to the revolution of 1789. It covers nearly 17,000 M.P.s. Certain information from this database is available for consultation on the internet site of the National Assembly: civil status of the M.P., dates of his term(s) and a biographical note.

4. – Producing for each M.P. a file compiling his participation in proceedings of the National Assembly in plenary sitting

As part of its information brief on parliamentary proceedings, the Archives Unit has set up, with the assistance of the Information Systems Department and the Sittings Report Department, an automatic procedure for the use of the databases concerning parliamentary activity so as to present for each M.P., a file collecting all of his speeches during the plenary sitting.

This file also lists his positions on each of the various bodies of the Assembly and outside the Assembly, as well as the Member’s bills, draft motions or reports he has tabled.

The file is published on the internet site of the National Assembly within the individual file appearing for each M.P.

The Archives Unit is also currently carrying out an inventory of the archive collections of parliamentarians located in departmental archives. The information thus gathered will enrich the individual files of the M.P.s.

5. – ENCOURAGING AND SUPPORTING RESEARCH INTO PARLIAMENTARY HISTORY AND LAW

The Archives Unit carries out two operations which aim at encouraging and developing research in the fields of parliamentary law and history:

- Research grant: every year the National Assembly awards a research grant to a student beginning or having begun a thesis in parliamentary law or history since the Revolution. The length and amount of this grant are based on the rules applied in higher education;
- The National Assembly Thesis Prize: this prize is given every year to one or two students who have successfully defended their doctoral thesis in one of the aforementioned fields. It is in the form of financial aid towards publication which is given to the publisher of the thesis.

File n°76

The Report Departments

Key Points

Article 33, paragraph 1 of the Constitution sets down the principle of the public nature of debates at the National Assembly and requires the publication of a verbatim report of these debates in the *Journal officiel*. One specific department is in charge of the production of this document.

At the same time, a second department drafts the reports of committee meetings, fact-finding missions and delegations of the National Assembly.

I. – THE PLENARY SITTING REPORT DEPARTMENT

The publication of a verbatim report provides each citizen with the possibility of being informed on the progress of parliamentary proceedings and gives real meaning to the notion of the public nature of the plenary sittings. According to article 59 of the Rules of Procedure of the National Assembly, the verbatim report represents the official record of the sitting.

The précis-writers replace each other in plenary sitting every quarter of an hour at the foot of the speakers' rostrum. During this period they take notes which will allow them to relate all aspects of the debate: the speech of the main speaker, interruptions made by M.P.s they must identify, movement or activity during the sitting. Once they return to their office, they will have the official recording of the sitting available on their computer. They then draft their report on a word processor.

The transposition of remarks which are often improvised into written language must respect the thoughts of the speaker but also requires a certain amount of editing to eliminate the inaccuracies and awkwardness of spoken language. As regards the legislative part of the debates, the verbatim report must also follow the rules of the various procedures.

The work of the précis-writers is reread and, if necessary, corrected by the heads of the department (director or deputy director) who in turn, have the responsibility of the report of the plenary sitting they attended.

Speakers may see their speeches before they are published and may make purely formal modifications without changing the content, as is laid down in article 19 of the General Instructions of the *Bureau*.

The verbatim report of a sitting is placed on the Internet site, as each drafter completes his work, within four hours of being spoken in plenary sitting. The whole sitting is available, on average, six hours after the end of morning and afternoon sittings and the following day in the case of night sittings.

It is simultaneously transmitted electronically to the *Journal officiel* which prints it, in accordance with article 33 of the Constitution which states that "a verbatim report of the debates shall be published in the *Journal officiel*". It is also printed in an internal newsletter of the Assembly which is distributed, on average, 24 hours after the end of the sitting.

The articles of the Government and Members' bills, amendments and sub-amendments examined during a plenary sitting are included in a special supplement. This supplement can be viewed along with the electronic version of the report and is added to the printed version.

II. – THE COMMITTEES REPORT DEPARTMENT

This department draws up, as is required, the reports of committee meetings, fact-finding missions and delegations. This mainly concerns the hearings of members of the Government or of various eminent figures, but also, for most bills, the debates of the committees dealing with the bills and the possible amendments made to them.

The drafters are present at the meetings and replace each other at intervals which can vary from half an hour to an hour and a half depending on the circumstances. They then draw up their report with the help of the notes they have taken as well as with the aid of the recordings which are made during the meeting. They generally have to work under pressure, as their work is part of a chain which is quite tense.

The draft they write is reread and if necessary corrected by the director or one of the deputy directors of the department. It is then transmitted to the secretariat of the relevant committee which checks it and ensures its publication under their responsibility on the internet site of the National Assembly. Extracts may also be republished in printed reports.

III. – RECRUITMENT

Précis-writers, whose salary scale is similar to that of advisers, are recruited by a competitive examination which aims at assessing their ability to take notes and to draft a reliable and readable report quickly with the help of a recording.

At the beginning of their career, they may be posted, according to the needs at the time, to either the Plenary Sitting Report Department or to the Committees Report Department. Afterwards, they will belong in alternation to these two departments.

File n°77

The Human Resources Department

Key Points

The Human Resources Department which is a joint department answering to the two secretaries general, is made up of three units in charge respectively of administration and labour relations, prospective management and training; and recruitment and working conditions.

☞ *See also file 67*

The Human Resources Department is in charge of the recruitment, management, and the training of the National Assembly staff – some 1,349 civil servants and approximately 100 contract workers.

This department, which is under the authority of a director, includes three senior advisers-heads of unit, nine deputy advisers, nine departmental secretaries and three porters.

The doctor in charge of preventive medicine, as well as the social worker, are part of this Department.

I. – THE ADMINISTRATION AND LABOUR RELATIONS UNIT

This unit manages all statutory provisions regarding the career management, salaries and working conditions of the staff.

It assists the political authorities of the Assembly in the drawing-up of projects to modify the status of the personnel, organizes the consultation of the representative trade unions on projects changing the salary structure, the social protection or the retirement regime of civil servants as well as the organization of departments.

It organizes the annual consultation meeting chaired by the *Questeurs*, which is the principal body for dialogue with the representative trade unions of the staff. This meeting allows the *Questeurs* to understand the main issues which will be the subjects of discussion with the trade unions during the year in the technical committees. It is also in charge of internal communication.

It organizes the promotion committees for the advancement of the ranks and grades of civil servants, manages the follow-up and deals with the regulatory

procedures in disciplinary matters. It draws up all the documents concerning appointments, promotions, postings, sanctions and modifications of administrative status. It also deals with the follow-up to appeals against such individual decisions.

It manages the contracts of contract and interim workers as well as the unemployment insurance of former contract workers of the Assembly.

II. – THE PROSPECTIVE MANAGEMENT AND TRAINING UNIT

The transformation of the Personnel Department into the Human Resources Department as of November 15, 2010, occurred together with the creation of a new unit within the department, in charge of implementing a prospective management of positions and skills on top of the administrative management of staff.

The Prospective Management and Training Department is especially in charge of the implementation of prospective management tools for staff, positions and skills as well as of the compiling of individual professional projects and the management of careers.

It is charge of drawing up and implementing the internal and external mobility policy.

It is also tasked with establishing a professional training programme and ensuring its implementation.

III. – THE RECRUITMENT AND WORKING CONDITIONS UNIT

This unit plans and organizes all the competitive examinations for permanent posts at the National Assembly, all held by civil servants. At present, there are 90 different examinations to fill positions in the 5 general branches (advisers, report drafters, deputy advisers, departmental secretaries, administrative secretaries and porters) and the 21 specialized branches (security, computing, building, catering and medical staff). The organization of competitive examinations also includes the setting-up of preparatory courses for internal competitive examinations, the drawing-up of the tests and the composition of juries as well as the study of the statutory provisions pertaining to recruitment.

The unit also manages the recruitment of contract staff posted to temporary positions. It also deals with the management of training periods and the reception of external trainees.

In addition, it manages the secretariat and the follow-up of the recommendations of the Health and Safety Committee as well as the secretariat of the Medical Committee in charge of proposing the adaptation of positions or timetables necessary for persons with special needs.

File n°78

Information Technology at the National Assembly

Key Points

The task of the Information Systems Department is to ensure the upkeep of all the computer-based means necessary for the correct running of the National Assembly. To accomplish this task it implements the guidelines set down by the *Bureau* of the National Assembly and the College of *Questeurs*.

It manages and maintains 68 applications dealing either with the National Assembly's task of drawing up the law and monitoring Government or with its everyday management activities. It uses over 2,873 computers, 8,132 network inputs, 124 WiFi outlets, 214 servers and supervises their security.

It provides M.P.s with the computer equipment they use in the *Palais Bourbon* as well as that used by the departments. It oversees the upkeep of the existing material, provides advice, assistance and training and develops in-house software or uses external providers.

At the end of the 1980s, the National Assembly set up a single computer department which was given the name "Information Systems Department" in 1998 and placed under the responsibility of the two secretaries general. It is in charge of managing the computer equipment of the institutional bodies of the National Assembly and its administration (excluding that of the political groups).

New guidelines concerning information systems for the period 2010-2012 reformed the governance of information systems, modified its internal organization and drew up an implementation programme for new software whilst at the same time providing additional means to carry out this task.

The Information Systems Department uses its own means to propose new services and may, when necessary, call upon external assistance, particularly when specific requirements in the field of expertise and development are needed (audits, advice, the conception and creation of new applications) or maintenance required.

I. – THE GENERAL ORGANIZATION OF THE INFORMATION SYSTEMS DEPARTMENT

The Information Systems Department (SSI) is in charge of the research, the conception, the carrying-out, the setting-up, the management and the upkeep of all applications for the entire National Assembly. It also deals with the installation and the

maintenance of hardware. In addition, it is responsible for the running of the production centre and the management of the computer network. In collaboration with the Human Resources Department, it also trains users in the skills needed to work with computers.

The SSI is made up of 63 people. The staff managing the department represents 10% of the total. 90% of the personnel are computer engineers and technicians. Among these 56 computer engineers and technicians , 28.6% are contract workers and 71.4% are civil servants who are recruited by internal or external examination for the following four units:

– The “Management” Unit which deals with budgetary and accountancy questions, with the preparation and follow-up to tenders and with every type of legal issue;

– The “Applications” Unit which deals with researching and developing the information system and with the correct operation of the applications used (maintenance and assistance);

– The “Production” Unit which deals with running the central systems as well as the internal and external networks;

– The “User-Support” Unit which deals with answering user requests for assistance by calling upon external service-providers, with the management and the maintenance of the micro-computer network, and with the technical assistance and organization of computer-based training periods.

II. – THE APPLICATIONS

The Information Systems Department manages and maintains 68 general applications and 160 specialized applications. Almost all these applications are unique to the National Assembly on account of its specific task of legislating and monitoring Government action and the particularity of its structure.

1. – LEGISLATIVES AND DOCUMENTARY APPLICATIONS

The main applications are the following:

– The electronic voting system

The electronic voting system means that the results of public ballots which take place in the Chamber may be known and published in real time. It has been adapted so as to enable votes outside the Chamber using several ballot boxes. The voting system is connected to a secure network which is distinct from the general network.

– The Legis application

This application is used to follow, by means of legislative files, the successive steps in the examination of Government and Members' bills, from their being tabled in the National Assembly or the Senate to their publication in the *Journal officiel*. The *Legis* database contains all the procedural information, as well as an indexed summary of the content of the Government or Members' bill. This

software, which is at the very heart of the legislative application programme, was developed in 2004 and 2005. It allows for the coordination of work between various legislative departments and controls the productions of numerous publications for internal use and for the *Journal officiel*. The data contained on this database feed into the National Assembly internet site.

– The Questions application

Since 2008, M.P.s and political groups can table and manage all their written questions to members of the Government on-line. The application Questions/Answers also manages questions to the Government and oral questions without debate. It allows the departments of the National Assembly to deal with these questions and to transmit them in electronic form to the *Journal officiel* for publication. Since 2012 ministerial answers have also been processed, collected and included in the database through a procedure and platforms which are totally paperless. During the XIIIth term of Parliament, the number of written questions asked by M.P.s and answers given by ministers was 132,317. They are all published on the internet site of the National Assembly.

– The Tribun application

This application is used to manage information concerning M.P.s' elective offices and their membership of the various bodies in the National Assembly. The database also contains information concerning Senators transmitted by the Senate. Data from this database may be consulted on internet.

– The Individual Files application

This application is used to provide, on the one hand, a description of the events which take place during the plenary sitting and on the other hand, an automated edition of the debate schedules of the National Assembly.

– The Library application

Beginning in 1992, the library has had a computerized list of all the works acquired since that date (fifteen thousand files per year). The indexing is carried out by using the *Bibliothèque Nationale's* (France's National Library) "Rameau" thesaurus which is also used by the National Foundation for Political Sciences. A new application implemented in 2009 makes works easier to find. It is also designed to facilitate and create more secure access, via internet, to the catalogue and enable reservations of works to be made on-line.

– The " Eurodoc" application

This application is used in the European Affairs Department to manage the documentation of the various European institutions. It may be consulted on intranet or on internet. It will be replaced at the beginning of 2013 by a more sophisticated application which will enable a totally paperless exchange of documents between the National Assembly and European institutions.

The National Assembly also possesses applications which enable the processing, management and transmission of legislative documents. These applications mainly concern:

– The processing and the transmission of the verbatim official report

The processing and transmission application for the official report, has enabled, since 2004, for the official report of the debates (“white book”) and since 2005, for the supplement of articles, amendments and annexes (“blue book”) their composition, secure electronic transmission to the *Journal officiel* for publication and their consultation on-line on the internet site of the National Assembly, in a 6-hour period after the sitting. The present application, which is based on data-processing, will be replaced in January 2013 by a completely renovated application which uses databases. This new application will enable the exchange of data with the information system using an xml format.

– The drawing-up, processing and transmission of amendments

Eloi will, from the beginning of the XIVth term of Parliament, provide M.P.s and their secretariats with the possibility, as they may already do for their questions, of remotely tabling their amendments directly on the information system by passing through an electronic portal. The time periods for placing the amendments on-line will be reduced. A table will present the amendments listed by text and by stage (in the process of being drawn up, tabled, withdrawn, to be discussed, discussed etc.) and will allow them to be accessed easily so that they may be modified or withdrawn.

This application will also allow the departments of the National Assembly to deal more quickly with the amendments tabled by simplifying and rendering paperless the current processing.

Eloi will provide a computerized support for a wide range of activities such as the preparation of bills for examination, the reediting and approval f amendments, the management of financial admissibility, the preparation of the ‘Yellow Booklet” for the plenary sitting, the creation of bundles of amendments in the order they will be called, the drawing-up of the text adopted, the production of the “blue book” annexed to the verbatim report of the sitting as well as the calculation of statistics.

2. – MANAGEMENT APPLICATIONS

The accountancy, salary and loan management systems now rely on a single piece of integrated, management software. The social security management system of the National Assembly has been outsourced to a service-provider.

So as to facilitate and improve access to the various buildings of the National Assembly, a “hands-free” identity pass management system was introduced in 2003.

An integrated directory was set up to facilitate the management of all the personnel files on the information system (administrative management of personnel, identity passes, telephone numbers etc.) and to manage the verification of access to the applications and systems.

A set of applications has been introduced for the management of the plans of the buildings of the National Assembly and the pinpointing of the equipment on these plans. The plans have been drawn up using a specialized piece of software and are

managed by the so-called “mapping cabinet” application. The management of the up-keep of such equipment is managed by a specialized piece of software which is connected to the integrated management software.

A series of applications for the electronic management of documents is being applied with the aim of rendering internal exchanges of documents paperless and enabling their follow-up.

The management of the printing tasks is now handled by a new application which renders the sending of documents to the print workshops paperless. Plans have been made to direct departmental requests for printing towards more efficient collective printers and the use of individual printers will then be limited to rare cases.

Other management applications have been implemented to cater for the specific needs of particular departments: stock management, restaurant management, applications for the Transport Unit when dealing with issuing transport tickets, or with coordinating motor transportation in Paris and in the suburbs or organizing the car-pooling of civil servants.

3. – MOBILITY APPLICATIONS

New guidelines concerning information systems for the period 2010-2012, adopted by the *Bureau*, have listed the providing of “mobility services” as the top priority. Such services allow the M.P.s of the XIVth term of Parliament to remain in permanent contact with the information system of the National Assembly.

A series of applications has thus been introduced to reach this goal. The messaging system Outlook/Exchange will allow the M.P.s of the XIVth term of Parliament to synchronize their smart phone with their computer, so as to receive their electronic mail and to synchronize their datebooks and their contacts.

A virtual office, which can be personalized, will enable them to connect easily through internet to the legislative applications as well as to any other useful application. The tabling of amendments or of questions will, in particular, be possible using remote access.

Moreover, the Information Systems Department has developed, for the Communication and Multimedia Department, a application allowing the consultation of the video of the plenary sitting and of standing committee meetings which is accessible speaker by speaker.

In addition, a series of 124 WiFi antennae allows M.P.s to connect to internet and thus to consult their electronic mailboxes from the meeting rooms of the National Assembly.

4. – THE MANAGEMENT BY THE SSI OF THE NATIONAL ASSEMBLY’S INTERNET LINKS AND ITS CONTRIBUTION TO THE USE OF THE ASSEMBLY’S WEB SITES

The National Assembly’s links to the internet network consist of two 50 Mbps connections, which are managed by the Information Systems Department using a load balancer and a series of protection software to safeguard against hacking and other malicious acts. Other internet connections are also available for the needs of

departments. The National Assembly is also connected to safe inter-ministerial network, ADER/Sigma.

The SSI also manages the use and the upkeep of preproduction infrastructures for the websites of the National Assembly. In this regard, it manages the preproduction servers and carries out the maintenances of a series of pieces of software which are used for this purpose.

– The Portal of the Departments of the Assembly: WEBAN

The intranet site, “Weban” may be consulted by all members of staff of the National Assembly. It enables the transmission and consultation of a large amount of information concerning the management of the personnel, in-house training, and competitive examinations, as well as practical information of all kinds. Almost all information published internally is nowadays available on-line.

– The Internet Site of the National Assembly

The authorities of the National Assembly decided to open, from the beginning of 1996, the internet site (http://www.assemblee-nationale.fr), which is operated in collaboration with the Communication and Multimedia Information Department.

This site provides the general public with information concerning the organization and running of the National Assembly. It provides access to parliamentary documents and to legislative files as well as to the live broadcasting of the plenary sitting.

In 2009, the internet site was enhanced with new video services both live and upon request. This was aimed at transmitting the parliamentary work of the National Assembly to an even broader audience.

III. – HARDWARE AND TECHNICAL INFRASTRUCTURE

1. – M.P.S’ HARDWARE

Each M.P. is provided with standard micro-computer hardware in his office at the National Assembly. This consists of two micro computers. The M.P. may choose the operating system (Windows 7 or Linux) as well as the office software (Office 2010 and/or OpenOffice). Each M.P. also receives an individual printer and a multi-functional printer (printer, fax, scanner). The two micro-computers have, in addition, shared private storage space on a shared file server. There is a so-called ‘hotspot’ socket in each office which also provides the possibility of a wired connection to internet. A WiFi antenna may also be installed upon request.

All the computers made available to M.P.s have a secure access to the internet and to a private internal network which provides the possibility of using different information applications. Assistance, maintenance and the necessary training are all provided by the Information Systems Department.

In addition, each M.P. receives a long-term computer allowance for his personal constituency secretariat (hardware, software, maintenance, training etc.). This allowance is allocated for the length of the term of office and is managed by the

Purchasing and Material Means Department. The M.P.s are entirely free to choose the computer equipment and supplier they wish.

2. – THE HARDWARE OF POLITICAL GROUPS AT THE NATIONAL ASSEMBLY

The secretariats of political groups at the National Assembly are allocated a specific allowance whose total amount is set for the entire Parliament according to the number of M.P.s the group actually has.

The political groups may decide upon their computer hardware policy with the advice, if they so wish, of the relevant departments of the National Assembly. Assistance, maintenance and training services concerning the hardware and software of the political groups are not carried out by the Information Systems Department. However requests for access to broadband services may be met via the National Assembly's network.

3. – DEPARTMENT HARDWARE

Having an office automation policy has enabled the standardization of the hardware of each department. Its aim is to simplify hardware management and to provide uniform hardware which uses the same software suites. This hardware is renewed every five years.

At the end of April, 2012, the network included 1,733 micro-computers.

4. – THE TECHNICAL INFRASTRUCTURES AND THEIR USE

The information system of the National Assembly included, at the beginning of 2012, 214 servers, of which 116 were physical and 98 virtual.

At the same date, the internal network included 8,132 sockets and 124 WiFi outlets.

There were 4,021 electronic mailboxes. The number of electronic mails entering the network of the National Assembly was around 1.2 million per month.

The computer engineers and technicians running the servers and the network represented one third of the staff of the Information Systems Department.

The running of the computer pool, the networks and the applications in 2011, led to 15,167 requests for assistance which were carried out in more than one third of the cases by technicians of the service centre.

File n°79

Security at the National Assembly

Key Points

With the exception of M.P.s, ministers in office and ambassadors accredited by France[1], every person within the precincts of the *Palais Bourbon* and its annexes is required to clearly display an identity pass.

Upon their arrival at the reception, visitors must undergo a security and identity check and are asked for the purpose of their visit. This procedure usually then leads to an identity pass being granted to anyone not possessing an access pass previously issued either temporarily or permanently by the National Assembly.

Vehicle access also requires undergoing such checks. This applies both to vehicles authorized to access the underground car parks of the Assembly as well as those carrying out deliveries on the premises of the Assembly.

Specific security measures are applied in the vicinity of the Chamber.

Security at the National Assembly, in the broadest sense of the word (i.e. the security of the institution and the safety of property and people) falls under the authority of the President of the National Assembly. The latter is thus in charge of the security staff of the National Assembly (security guards and porters), reinforced by a detachment of fire-fighters, officers from the National Police Force and a military presence which are all under his command. The external or so-called "peripheral" security is under the responsibility of the Prefect of Police of the City of Paris (Interior Ministry). This includes the public streets running between the various buildings of the National Assembly.

I. – GENERAL ARRANGEMENTS

According to article 3 of ordinance no. 58-1100 of November 17, 1958 concerning the running of the parliamentary assemblies, "*the presidents of the parliamentary assemblies are responsible for overseeing the internal and external security of the assemblies over which they preside. They may, in so doing, call upon all armed force or any authority they may deem necessary. This call may be addressed*

1. This is a diplomatic "courtesy" dispensation which only applies to the diplomat himself and not to the members of delegations or groups accompanying him

directly to any officer or public servant and the latter are obliged to answer it immediately or face the penalties set down by the law.

"*The presidents of the parliamentary assemblies may delegate such a power of summons to all or one of the Questeurs.*"

This ordinance thus provides that the President of the National Assembly is responsible for both the internal and external security and safety of the Assembly. In so doing he has a general and permanent power of decision.

In order to carry out his responsibilities in the security field, the President of the National Assembly has, at his disposal, the security staff of the Assembly, military forces and a group of firemen seconded from the Fire Brigade of the City of Paris. These are all under the authority of either the Secretary General of the *Questure* or of the military commander. These two authorities continually work together in very tight collaboration.

The checking at reception of people coming from outside the Assembly is carried out by two departments: the General Administration and Security Department (Reception, Security and Safety Unit) and the Communication and Multimedia Information Department (for the press and people attending the plenary sitting).

1. – THE RECEPTION, SECURITY AND SAFETY UNIT

The Reception, Security and Safety Unit, which is under the authority of the Director of the General Administration and Security Department, includes, in particular, the "Reception/Meetings" Team and the Security Service.

The former, which is in charge of the reception of individual visitors, is made up of around fifty porters. It carries out security checks using metal detection gates and X-ray machines for bags, issues temporary identity passes in exchange for passports and national identity cards and provides permanent identity passes for the various staff working at the National Assembly.

The Security Service is made up of former non-commissioned military officers who have spent, at least, 15 years in the armed forces and who are recruited by competitive examination. They are responsible for security checks at the gates and monitor the access of vehicles. The security guards maintain a 24-hour watch on all the buildings of the National Assembly from a central operations room.

2. – THE MILITARY DETACHMENT

A detachment of Gendarmes from the Republican Guard, under the command of a Colonel, who is the military commander of the *Palais Bourbon*, is at the disposal of the President of the National Assembly.

The military commander is appointed by order of the President of the National Assembly and is thus directly under his command in the exercise of this position. He is assisted by a second-in-command and a military staff. It should be noted that amongst other tasks, he is responsible for military surveillance and intervention. He has authority over the permanent detachment and the services provided by the Republican Guard to whom he gives orders. He is in charge of liaising with the civilian and

military authorities in charge of law and order in matters concerning the external security of the *Palais Bourbon*. Along with the Secretary General of the *Questure*, he draws up the security plans. In addition, he fulfils the role of military advisor to the President of the National Assembly.

The military detachment carries out, when necessary, internal security operations including, in particular, bomb detection.

3. – THE POLICE OFFICERS

Three police officers, of the rank of inspector or chief inspector, are also at the disposal and under the authority of the President of the National Assembly who appoints them. Their main task is to liaise with the national police force, in particular, in the event of disturbances in the area of the *Palais Bourbon*. They also ensure that those attending the plenary sittings do not disturb the proceedings.

4. – THE DETACHMENT OF FIRE-FIGHTERS

This detachment is made up of around twenty fire-fighters under the authority of an officer who also acts as a fire-prevention advisor to the Director General of Administrative Services. The detachment mans two security command rooms which are independent of the operations room and which oversee all fire prevention measures.

II. – MEASURES CONCERNING THE SECURITY OF THE CHAMBER

A special security cordon has been set up around the Chamber and extends to the floors below and above. The galleries are under particular surveillance. Military sniffer-dog teams periodically check the basement as well as the Chamber itself. Explosive detection checks are carried out on all materials which enter this cordon and similar checks are systematically made during the daily cleaning of the Chamber. The stocking of material or equipment is severely restricted in this area and is particularly supervised.

The number of identity passes granting permanent access to the Chamber is limited to the strict minimum and anyone belonging to an outside company may only enter with the permission of the department responsible for the room’s maintenance and if accompanied by an authorized public servant.

III. – CHECKS

The risk of attacks or malicious acts against state institutions has led the authorities of the National Assembly to strengthen security checks at the entrance to the various buildings of the Assembly. Security precautions are based on the principle of separating those in possession of a permanent pass allowing them to access through specific entrances equipped with automated security systems from those without such passes. These visitors are thus systematically screened by the reception staff.

1. – PEDESTRIANS

These precautions apply to the security, identity and visitor-processing checks carried out at entrances accessible by pedestrians as well as by drivers and passengers in vehicles which have been authorized to enter the *Palais Bourbon*.

The arrangements apply to:

– People on tours of the *Palais Bourbon*;

– Visitors invited by M.P.s, political groups or a department of the National Assembly;

– People holding invitations to attend a plenary sitting;

– The "first ten people in the queue" without an invitation but wishing to attend a plenary sitting (with the exception of sittings given over to special current affairs which are not accessible to this category);

– People invited to attend or participate in meetings held at the behest of one or several M.P.s in one of the rooms or offices of the Assembly;

– Guests at a reception held in the *Questeurs'* apartments;

– People invited by one of the members of the President's staff;

– Guests invited to a reception held in the Presidency;

– Non-accredited journalists;

– People working for sub-contractors (building workers and maintenance staff).

a) Security Checks

There are two types of security check:

– Entrance through a security gate which may be followed by an examination using a manual metal detector;

– Checking of hand-baggage and personal effects by X-ray machine.

These checks are carried out on all visitors.

b) Identity Checks

Identity checks are carried out systematically. They require the presentation of a photographic identity document (identity card, veteran's card, press card for journalists and for foreigners, a passport, residence permit or work permit). A professional identity card with a photograph may also be accepted, notably that of French civil or public servants. However, it should be noted that identity passes issued by public authorities or companies are not accepted nor are driving licences.

c) Checking the purpose of the visit: the implementation of the rules concerning participation in meetings organized by M.P.s (article 26, XII of the General Instructions of the Bureau)

In cases concerning meetings or receptions, the person is checked against a list of guests provided by the body which is inviting or organizing. The actual presence of the M.P. or his representative is required for the admission of the visitor(s).

People whose name does not appear on the list cannot be admitted without the agreement of the M.P who is organizing the event or of his appointed representative. If neither of these people is present, then the visitor cannot be admitted.

In cases concerning individual visitors wishing to go to an M.P.'s office, to a department or to a political group's office, admission is always dependent upon explicit confirmation by telephone that the person(s) is/are indeed expected.

d) Issuing of Identity Passes

In exchange for his identity document, each visitor is issued with an identity pass which must be clearly worn. The colour of the pass and its specific annotations detail the places or the areas which the visitor is entitled to visit. This particular measure does not concern people invited to a reception held at the *Hôtel de Lassay*, the *Petit Hôtel*, or the apartments of the *Hôtel de la Questure* nor does it concern those people attending the plenary sitting or on a guided tour of the *Palais Bourbon* (a photocopy of the identity document provided by these people is nonetheless made).

2. – VEHICLES

The following measures apply to security and identification checks carried out on vehicles not having access permits issued by the Assembly[1]. Checking vehicles is the task of the security staff.

a) Security Checks

These are random checks carried out on the boot, trunk, inside and underneath of all vehicles entering the premises of the National Assembly.

b) Checking the Purpose of the Visit

The permit, signed by the relevant authority, including the vehicle registration, driver and passengers is checked.

c) Identity Checks and the Issuing of Identity Passes

The driver and, if necessary, the passengers must present an identity document which is checked.

Drivers not possessing a pass issued by the National Assembly must park outside and go to the reception office[2] to receive their pass before they may bring their vehicle inside. This pass is issued in the same way as for pedestrians. There are several types of pass:

- Delivery pass. This is for delivery drivers who must also have their delivery;
- Slip signed by the person who receives the delivery;
- Building site or temporary pass. This is for service-providers and depends upon the nature and the length of the job.

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1. Those possessing access permits are the vehicles of the National Assembly's car pool, vehicles driven by M.P.s and cars owned by parliamentary civil servants and political group assistants who have been issued with parking authorizations for one of the Assembly's car parks.
2. The pass is issued by the security guard if the reception office is closed.

IV. – THE AREA SURROUNDING THE NATIONAL ASSEMBLY

As regards matters concerning external security, no President of the National Assembly has, as yet, used all the powers provided for by the ordinance of 1958.

The responsibility for the maintenance of law and order outside the limits of the National Assembly is in the hands of the Minister of the Interior and thus, by delegation, in those of the Prefect of Police of the City of Paris. This principle was not changed when the National Assembly bought several buildings as annexes to the *Palais Bourbon*, the historic seat of the National Assembly. Thus the authority of the Prefect still applies today in the streets which separate these buildings from the *Palais Bourbon* itself.

Nonetheless, the President of the National Assembly still has the power to directly call upon, at any time, the Prefect of Police and his departments in order to take the necessary measures to ensure the external security of the *Palais Bourbon* or to keep its entrances accessible.

1. – DEMONSTRATIONS

In accordance with articles L. 211-1 and L. 211-2 of the Code of Internal Security, any demonstrations which take place in Paris must receive the authorization of the Prefect of Police. A prior statement must be completed detailing their assembly points and their route. Failure to abide by these provisions is punishable by article L. 431-9 of the Criminal Code.

Generally speaking, demonstrations are confined to certain broad Parisian avenues and are prohibited in the vicinity of the buildings of the National Assembly and in particular, in the streets leading to the entrances of the *Palais Bourbon*.

However certain smaller gatherings may be authorized on the *Place Edouard Herriot*. Several representatives of such demonstrators may even, upon request, be allowed to meet with M.P.s or political group secretaries (each such delegation is made up of five people at the most).

2. – VICINITY MEASURES

A network of CCTV cameras has been installed both by the Paris Police Department, in order to monitor the neighbouring streets and by the Security Department of the National Assembly in order to check the areas around the buildings. The National Assembly and the Police Department can – and do – share pictures. In addition, the paths, gardens and courtyard on the River Seine side of the *Palais Bourbon*, are protected by railings. Police and Republican guards patrol both day and night in order to maintain the security of these places which face onto the public highway.

File n°80

The Protocol Unit

Key points

The Protocol and Management Unit has two functions: it organizes the events connected with the international activities of the Presidency of the National Assembly and it manages the financial aspects of international activities. It is linked administratively to the General Secretariat of the Assembly and the Presidency and has relative operational autonomy. It is a horizontal structure which serves the other bodies of the National Assembly but which is fundamentally centred on the logistical aspects of events: ceremonies in which the institution is represented, visits by foreign delegations or parliamentary missions abroad. It is also one of the few structures of the National Assembly whose job it is to maintain permanent links with external partners (presidency of the Republic, ministries, foreign or French embassies, service providers, etc.).

☞ *See also files 58 and 71*

The Protocol and Management Unit:

– Is involved in the organization of ceremonies at which the National Assembly or one of its bodies is represented as well as in the welcoming of foreign personalities or delegations;

– Prepares the financial decisions concerning the missions, receptions or actions of parliamentary cooperation;

– Makes all financial documents for the corresponding expenses and permanently oversees the use of the allocations for international actions;

– Is in charge of the material organization of all events connected with the international activities of the National Assembly.

Under the authority of the Director General of Legislative Departments, this unit remains in close contact with the office and the staff of the President, with the Protocol Department of Foreign Affairs Ministry and with the foreign embassies in Paris.

The current staff of the unit is composed of 9 civil servants. However, when it is necessary for the most important events, other civil servants from the international departments or from other departments of the National Assembly may be called to assist.

I. – ACTIVITIES LINKED TO PARLIAMENTARY PROTOCOL

1. – THE REMIT OF THE PROTOCOL UNIT

The ceremonial of the plenary sittings comes within the brief of the Secretary General of the National Assembly and of the Presidency and the Table Office. So the Protocol Unit is in charge of:

- National ceremonies in which the National Assembly is represented [New Year's greetings of the President of the Republic, Commemorations (May 8, November 11), Bastille Day (July 14), funerals etc.];
- Other ceremonies taking place inside the *Palais Bourbon* (inaugurations, placing of wreaths, commemoration plaques etc.);
- Welcoming of the foreign delegations received by the President or members of the *Bureau* of the National Assembly for talks, a meal or a working visit;
- Missions in France or abroad concerning the President or members of the *Bureau* (vice-presidents, *Questeurs*).

The Protocol Unit organizes the programme of the visits for the highest foreign dignitaries, including: meetings at the *Hôtel de Lassay*, receptions, (lunches, dinners or cocktail receptions), visits of the *Palais Bourbon*, speeches of Heads of State or Prime Ministers in the Chamber, welcoming to the Chamber of foreign delegations, working meetings with presidents or vice-presidents of parliamentary assemblies.

It takes part in the organization of the meetings regarding various bilateral parliamentary structures like the joint meeting of the *Bureau* of the National Assembly and the Präsidium of the German Bundestag, the Grand France-Russia Committee or the France-Québec Inter-parliamentary Committee. It is requested to organize the bilateral or multi-lateral parliamentary events (Centenary of the Entente Cordiale between France and the United Kingdom, the 40th anniversary of the Elysée Treaty between France and Germany, the parliamentary events of the G8 etc.) or for all visits of important foreign dignitaries.

2. – MISSIONS INVOLVING ASSISTANCE TO DEPARTMENTS AND EXTERNAL BODIES

The Protocol Unit is also in charge of the following duties:

- It establishes the order of protocol for the members of the National Assembly according to the principles determined by the *Questeurs* based on the Rules of Procedure of the National Assembly;
- It gives advice to the departments of the National Assembly and to the M.P.s to help them in the organization of events or conferences, table plans or in the booking of hotels or restaurants in Paris;
- When it is necessary, the unit helps the civil servants in charge of the reception of a foreign delegation or of a mission of French representatives abroad.

It is consulted on questions regarding the order of protocol for dignitaries, the flying of flags on the National Assembly, the clothes worn by M.P.s, especially

official sashes or decorations, and civilian or military honours given to some dignitaries.

3. – THE ROLE OF PROTOCOL

In its concrete roles the Protocol Unit:

- Collects and provides information that is necessary to deliver to political personalities, to the departments of the National Assembly or to external partners;
- Coordinates action and partners at events;
- Gives orders and advice and delivers circulars for all partners;
- Is a main actor during events.

Thus the Protocol Unit establishes relations with numerous partners, both inside and outside the National Assembly and it is one of the Departments of the National Assembly which is at the very centre of public relations.

II. – MANAGEMENT ACTIVITIES

The basic principle is that each expense incurred during a mission, a reception or an action of cooperation linked with the international activities must be authorized in advance by the *Questeurs*.

The Protocol Unit deals with the requests of the international departments, the standing committee secretariats and the delegations which require funds. Upon the request of the department in question, it prepares a "*questeurs'* decision" which will be included on the *Questeurs'* agenda. It establishes an estimate for the expenses linked to the mission or the reception, calculates the different expenses (for transportation, accommodation, catering, translation, gifts, miscellaneous etc.) and follows the entire procedure of examination by the College of *Questeurs*.

The Protocol and Management Unit is also in charge of the following duties:

- It oversees the use of allocations for all international activities and informs the departments about the level of spending of their annual budget. The corresponding data are used in the preparation of the annual report on the use of funds and the budgets for the following years;
- It answers the requests of the two Secretaries General and the *Questeurs* regarding the necessity of the expenses and the use of funds;
- It advises the civil servants in charge of the funds and checks the accounts prepared by them at the end of the mission or the reception (concerning the legality of the accounts and the necessity of the spending);
- It prepares the accountancy documents for the signature of the Director General of Legislative Departments.

This management role represents about 25% of the activities of the unit. It is infrequent in parliamentary structures where the financial aspects usually come under

the responsibility of Financial Departments. However, its main advantage is to allow a better supervision of the international activities and the corresponding funds.

File n°81

The Secretariats of the Political Groups

Key Points

In accordance with article 20 of the Rules of Procedure of the National Assembly, any political group formed following the correct rules, may be serviced by an administrative secretariat to be recruited and paid as determined by the group itself.

☞ *See also file 22*

I. – ORGANIZATION AND FINANCING OF THE SECRETARIATS OF THE POLITICAL GROUPS

1. – THE ASSISTANTS OF THE POLITICAL GROUPS

Each political group is entirely responsible for its staff, whether it be their recruitment, the amount they are paid, their work conditions or their dismissal.

These assistants come from different backgrounds: they may be young university graduates or doctoral students, civil servants on leave of absence from central or regional administration or even people from a community service background.

The number of assistants working for political groups in the XIIIth term of Parliament was around one hundred.

2. – THE FINANCING OF THE SECRETARIATS OF THE POLITICAL GROUPS

In order to manage its staff, each political group can avail of a financial contribution from the National Assembly and from its members towards the secretarial costs. The latter contribution is made up of transfers of a part of the staff allowance or of dues. The subsidy was introduced in 1954, i.e. twenty years before the creation of the staff allowance.

From an administrative point of view, since 1980 the groups benefit from technical support from the Budget, Financial Monitoring and Procurement Department which calculates the salaries and the social and tax contributions linked to them, of those working for each group upon the instructions of their employer.

3. – THE ASSOCIATION OF CHAIRMEN OF POLITICAL GROUPS

An association, set up in 1961, brings together the chairmen of the political groups.

From a tax and social security point of view, it is the employer and it is in charge of fulfilling the necessary obligations as regards tax declarations and the payment of contributions.

In practice, the competence of the association is mainly formal. Nonetheless it is registered with the URSAFF (the social security contribution collection agency) as an employer (in the place of the political groups which in certain cases have no legal identity).

In addition, all the employees of the political groups contribute to the same complementary retirement scheme and to the same contingency scheme.

II. – MISSIONS OF THE SECRETARIATS OF THE POLITICAL GROUPS

Generally speaking, the assistants of the political groups work under a secretary who, under the authority of the chairman of the political group, apportions the tasks between them and is responsible for their management.

Each political group decides freely on its internal organization, which depends largely on the number of available assistants. Most of them are in charge of one or several areas of legislative activity. As they are in regular contact with the civil servants of the secretariats of standing committees, they follow the activities of the relevant committee(s) and contribute, within their group, to the drawing-up of the position to be adopted regarding the bills which are being examined.

File n°82

Parliamentary Assistants

Key Points

The National Assembly grants M.P.s the possibility of recruiting parliamentary assistants to help them in the carrying out of their office and their various responsibilities.

These assistants are bound by a private law contract to their M.P./employer. This contract falls within the scope of ordinary labour and social protection law.

The help they provide to an M.P. varies and can go from simple material tasks to much more elaborate contributions (speech-writing, amendments).

☞ *See also files 17 and 82*

The creation of the position of parliamentary assistant (or M.P.'s secretary) dates from 1975. It represents, in a certain way, the end of a long process which fulfils the wishes of M.P.s to avail, along with their parliamentary allowance seen as a salary, of human and material means enabling them to meet the various expenses engendered by their office and which reinforce the means collectively allocated to the political groups.

This process has been marked by several steps.

In 1953 an allowance compensating the secretarial expenses of M.P.s, was created. This was abolished in 1958.

The allowance for a typing assistant, which was created in 1970, replaced the mechanism introduced in 1968 which provided M.P.s with the possibility of setting up a personal secretariat or of using the services of a collective secretariat organized within each political group. The object and the conditions of the management of this allowance were modified on several occasions right up until 1997. In that year, the secretariat allowance was replaced by the office expenses allowance (IRFM) which was to cover the expenses linked to the carrying out of the M.P.'s position, which are not reimbursed by the National Assembly. As a special expense allowance, it is not subject to income tax but to a solidarity contribution at the rate of 8%. It amounts to €6 412 gross per month.

However, at a time when the demands placed on M.P.s in the carrying out of their functions were growing and required the help of assistants similar to those in certain foreign parliaments such as the US Congress, the request of the M.P.s for

assistance was bound to go beyond that of mere secretarial support. This explains the implementation of a grant specifically aiming at the recruitment of private assistants. This grant was called the 'assistant allowance'.

I. – THE STATUS OF PARLIAMENTARY ASSISTANTS

1. – THE PRINCIPLE OF THE M.P./EMPLOYER AND THE APPLICATION OF ORDINARY LABOUR LAW

The M.P. has at his disposal an allowance which enables him to recruit up to five assistants. This monthly allowance amounts to €9,138.

The basic principle is that the M.P. is the employer. The assistant is the employee of the M.P. and not of the National Assembly. This principle, which was reinforced in 2002 by the possibility for the M.P. to directly manage his assistant allowance, is at the basis of all the rules and mechanisms which govern the relationship between the M.P. and his assistant(s):

- The M.P. has the position of employer. He can freely recruit his assistants, dismiss them and set their work and pay conditions, as long as he respects the provisions of the labour code;
- The assistants are recruited on the basis of a private law contract. Generally speaking, these are open-ended contracts but the M.P. may recruit his assistants on the basis of a fixed-term contract (within the conditions laid down by the labour code) or offer specific contracts when a civil servant is seconded to him in application of the laws pertaining to the status of civil servants. The open-ended contract continues if the M.P./employer is re-elected. However it is terminated upon the end of the M.P.'s term of office or in the case of a dissolution;
- Stock contracts, the clauses of which are approved by the *Questeurs*, are made available to the M.P.s by the Department of Financial and Social Management. They contain two stipulations which are directly linked to the method of management of the assistant allowance. The first, concerning the object of the contract, states that "*the employer, acting on his own account, employs the employee who is legally subordinate to him and enjoys all his confidence to assist him in the carrying-out of his function of M.P.*". The second states that "*the termination, for whatever reason, of the term of the M.P./employer constitutes a reasonable cause for the ending of the contract*".

In the case of disagreement between the M.P./employer and his assistant, the Industrial Tribunal is alone competent, as for any dispute between an employee and his employer in a private company. It should be noted that there has been a considerable increase in the number of such disputes brought before the Industrial Tribunal in recent years.

An assistants' organization called into question the principle of the M.P./employer by attempting to have the magistrates' court of the 7th district of Paris recognize the existence of an economic and social unity between the M.P./employers

and the assistants. The application was rejected by a judgement rendered on May 21, 2002, stating that the social advantages and, more generally, the work conditions of the assistants were similar to the notion of "*the mutualisation of means, which was usual within the same profession" and concluded that "the absence of a real community of workers and of economic unity prevented the recognition of the existence of an economic and social unity between the M.P.s of the National Assembly*". This judgement was the subject of an appeal to the Court of Cassation. The Social Tribunal of the Court of Cassation rejected it with a ruling on February 18, 2004 which stated that "*there is no unity of management over the parliamentary assistants*" and that "*the M.P.s who make up the National Assembly do not (therefore) constitute an economic and social unity*".

2. – THE MANAGEMENT OF THE ASSISTANT ALLOWANCE DELEGATED TO THE FINANCIAL AND SOCIAL MANAGEMENT DEPARTMENT

Since 2002, each M.P. must choose between granting a management power of attorney to the Assembly or managing this allowance directly.

In the case of the granting of a management power of attorney, the Financial and Social Management Department, upon the instructions of each M.P., attributes the remuneration of the assistants and carries out, on behalf of the M.P.s, the management measures such as the issuing of pay slips, the payment of salaries with the necessary contributions and the drawing-up of and the transmission to the relevant organizations of the social and tax declarations. In so doing, it merely carries out the function of a service-provider.

In the case of direct management, the M.P. receives the equivalent of one and a half times the basic allowance to cover the employer costs.

3. – SOCIAL PROTECTION AND PARLIAMENTARY ASSISTANTS

The salaried assistants come under the general social security system for salaried workers as regards sickness, maternity, death, work accidents and old-age, under the supplementary retirement scheme for salaried workers under private law and under the unemployment insurance scheme. They benefit from the provisions of the labour code concerning vocational training.

Since 1975, a number of measures have improved the situation of assistants. Apart from the fact that their salaries have been re-indexed to be aligned with those of the public sector, many of the employer costs are financed outside of the assistant allowance. These include:

- From the beginning, the obligatory employer social and tax costs which represent about half of the gross salary contributed to the assistant allowance;
- From 1978, the severance pay at the end of a contract allocated to assistants in the case of the termination of the term of the M.P./employer;
- Since January 1, 2006, after two years of service, the seniority bonus which is equal to 5% of the basic salary and is increased by 5% every two years with a ceiling at sixteen years of seniority;

– Various expenses linked to specific training given to assistants (training provided by the National School of Administration since 1986 and by the National Centre for Territorial Administration since 1991, English courses since 1992), linked to occupational medicine and linked to the assistants' transport costs for journeys between Paris and the constituency, requested by the M.P./employer.

In addition, other fringe benefits are given to the assistants:

– The 13th month allowance, which was introduced in 1982 and is the equivalent of an extra month's basic salary;

– The child-minder's benefit which has been granted for children under three years of age, since 1988;

– The contingency bonus, which since 1998 has replaced the limited reimbursement of the costs of a mutual insurance company;

– The meal allowance (food allowance or luncheon vouchers), introduced in May 2000.

At the outset, these advantages were directly taken care of by the budget of the National Assembly and the M.P./employer could oppose their payment. Since 2002 all, with the exception of the child-minder's benefit (which is still taken care of by the National Assembly's budget) are attributed to the assistant allowance which has thus been re-indexed.

Since January 1, 2006, assistants fulfilling certain diploma conditions and/or seniority conditions may be granted the status of '*cadre*' (manager) if they make a written request to their M.P./employer.

II. – THE WORK OF PARLIAMENTARY ASSISTANTS

The assistant plays the role that each M.P. assigns to him within the team that he has recruited. This situation makes it impossible to go beyond general observations when discussing the work of these assistants.

Certain M.P.s concentrate their team in their constituency, others in Paris and some divide their team between the National Assembly and their constituency. In practice, roughly speaking about two thirds of assistants work in constituencies and about one third at the *Palais Bourbon*.

The tasks they are assigned depend upon the needs of the M.P. and the abilities of the person recruited:

– Most assistants are assigned secretarial and support tasks, such as the keeping of the appointments diary, the arrangement of meetings, answering the telephone and support for a variety of material tasks.

– The most qualified assistants, with university degrees for example, help the M.P. in the carrying out of his function: speech-writing, preparation of Members' bills and amendments, representation within the political group etc.

ASSEMBLÉE NATIONALE

Glossary of parliamentary terms

Français	English

A

abstention	**abstention**
accords internationaux	**international agreements**
accréditation	**accreditation**
accueil des députés	**reception of M.P.s**
actes communautaires/ actes européens	**instruments of the EU**
adhésion (à un groupe)	**enrolment (in a political group)**
administrateur	**adviser**
administrateur adjoint	**deputy adviser**
adoption	**adoption (of a motion / amendment / resolution), passing of a bill**
agent	**porter**
alinéa	**paragraph**
amendement	**amendment**
amendement en discussion commune	**amendments subject to joint consideration**
amendement de suppression	**deletion amendment**
apparenté	**aligned member**
appel nominal	**roll-call**
application des lois	**implementation of laws**
arbitrage	**arbitration**
arrêt (en Conseil d'État)	**judgment (in the Conseil d'État)**
arrêté (ministériel)	**(ministerial) order**
article	**article**
article additionnel	**additional article**
assistant parlementaire	**parliamentary assistant**
attaché parlementaire	**parliamentary attaché**
audition	**hearing, interview**
auteur (de la proposition de loi, de l'amendement, etc.)	**author (of bill, amendment etc.)**
autonomie administrative	**administrative autonomy**
autonomie financière	**financial autonomy**
avis	**opinion**

Français	English

B

ballottage	**run-off (in elections)**
bicamérisme *ou* bicaméralisme	**bicameralism**
budget	**budget**
bulletin blanc	**blank ballot**
bulletin nul	**spoiled ballot**
bulletin de vote	**voting paper**
bureau d'âge	**provisional *bureau***
bureau de l'Assemblée	***bureau* (governing board) of the National assembly** ①
bureau de vote	**polling station**

C

cabinet du président	**president's staff, advisors**
campagne électorale	**electoral campaign**
candidat	**candidate**
censure	**censure**
chaîne parlementaire	**parliamentary television channel**
chambre basse	**lower chamber**
chambre haute, haute assemblée	**upper chamber**
charge publique	**public expenditure**
circonscription	**constituency**
clôture de la session	**closure of the session**
cocarde	**(red, white and blue) official sticker**
code	**code**
codification	**codification**
collectivité territoriale	**territorial unit, local authority**
collectivité d'outre-mer	**overseas territorial unit**
collège électoral	**electoral college**
comité secret	**in camera committee**
commentaire d'article	**commentary on an article**
commissaire	**committee member**
commissaire du gouvernement	**government adviser (on a specific bill)**
commission	**Committee** ②
Commission des affaires culturelles	**Cultural affairs committee**
Commission des affaires sociales	**Social affairs committee**
Commission des affaires économiques	**Economic affairs committee**
Commission du développement durable	**Sustainable development committee**
Commission des affaires étrangères	**Foreign affairs committee**
Commission chargée de vérifier et d'apurer les comptes	***Ad hoc* committee in charge of checking and auditing the accounts**
Commission de la défense nationale et des forces armées	**National defence and armed forces committee**

Français	English
commission d'enquête	**commission of inquiry**
Commission des finances, de l'économie générale et du plan	**Finance, general economy and planning committee**
Commission des lois constitutionnelles, de la législation et de l'administration générale de la république	**Constitutional acts, legislation and general administration committee**
Commission des affaires européennes	**European affairs committee**
commission mixte paritaire	**joint committee**
commission permanente	**standing committee**
commission saisie au fond	**lead committee**
commission saisie pour avis	**consultative committee**
commission spéciale	***ad hoc* committee**
communiqué de presse	**press release**
compte rendu analytique	**analytical report**
compte rendu intégral	**verbatim report**
compte rendu sténographique	**shorthand report**
conférence des présidents	**conference of presidents**
Congrès	**Congress**
Conseil constitutionnel	**Constitutional council**
Conseil économique et social et environnemental	**Economic social and environmental council**
Conseil d'État	**Conseil d'État (State Council)**
conseiller	**senior adviser**
conseil des ministres	**council of ministers**
Constitution	**Constitution**
contestation (d'élections)	**(electoral) litigation**
contreseing	**counter-signature**
contrôle budgétaire	**monitoring of the budget**
contrôle de la constitutionnalité	**monitoring of constitutionality**
contrôle de l'exécutif	**monitoring of the executive**
convocation du parlement	**convening of parliament**
coopération interparlementaire	**interparliamentary cooperation**
Cour des comptes	**Court of accounts**
Cour de Justice de la République	**Court of Justice of the Republic**
cumul des mandats	**combination of offices**

D

débat	**debate**
décision de questure	***questure* decision**
décision du Conseil constitutionnel	**ruling of the Constitutional council**
Déclaration des droits de l'homme et du citoyen	**Declaration of the rights of man and of the citizen**
déclaration de patrimoine	**declaration of estate**
déclaration de politique générale	**statement of general policy**

Français	English
déclaration d'urgence	**declaration of urgency**
décret	**decree**
défenseur des droits	**defender of rights**
délai de dépôt des amendements	**deadline for tabling amendments**
délégation aux droits des femmes et à l'égalité des chances entre les hommes et les femmes	**delegation for women's rights and for equal opportunities between the sexes**
délégation parlementaire	**parliamentary delegation**
délégation de vote	**proxy vote**
délibération	**discussion, consideration (of a bill)**
démission	**resignation**
dépôt	**tabling (of a bill)**
dépouillement	**counting of votes**
député	**M.P. (member of Parliament)**
« dernier mot » de l'Assemblée nationale	**final say of the National assembly (in the final stage of the "shuttle ")**
deuxième lecture	**second reading**
discipline de groupe	**political group discipline (the whip)**
discours	**speech**
discussion commune (des amendements)	**joint consideration (of several amendments)**
discussion générale	**general discussion**
dispositif	**main body of a bill**
disposition	**provision**
dissolution	**dissolution**
domaine de la constitution	**within the ambit of the constitution**
domaine de la loi	**legislative field**
domaine règlementaire	**regulatory field**
dossier du président	**president's file**
doyen d'âge	**oldest member**
droit d'amendement	**right to table amendments**
droit constitutionnel	**constitutional law**
droit de parole	**right to speak**
droit de vote	**right to vote**
droit électoral	**electoral law**
droit parlementaire	**parliamentary law**
E	
écharpe	**sash**
élections	**elections**
élections législatives	**general elections**
élections partielles	**by-elections**
éligibilité	**eligibility**
enceinte du palais	**premises of the National Assembly**
engagement de responsabilité	**requesting a vote of confidence**

Français	English
engagement de responsabilité sur le vote d'un texte	**making the passing of a bill an issue of confidence**
état de siège	**martial law**
examen des articles	**examination of articles**
exception d'irrecevabilité	**objection of inadmissibility**
exposé des motifs	**introductory explanations**
exposé sommaire	**brief presentation (of an amendment)**
explication de vote	**explanations of votes**
F	
fait majoritaire	**existence in the National assembly of an absolute majority supporting the government**
fait personnel	**point of order concerning a personal attack**
feuilleton	**daily bulletin**
financement des partis politiques	**financing of political parties**
finances publiques	**public finances**
fixation de l'ordre du jour	**setting the agenda**
fonction publique	**civil service**
fonctionnaire parlementaire	**parliamentary civil servant**
formules de séance	**official formulae used during the sitting**
G	
Garde républicaine	**Republican guard**
gouvernement	**government**
groupe d'amitié	**friendship group**
groupe d'études	**study group**
groupe politique	**political group**
groupe de pression	**lobby**
H	
Haute Cour de Justice	**High Court of Justice**
hémicycle	**(debating) chamber**
huissier	**(parliamentary) usher**
I	
immunité	**immunity**
incapacité	**incapacity**
incompatibilité	**incompatibility**
indemnité de fonction	**personal allowance**
inéligibilité	**ineligibility**
initiative des lois	**right to initiate laws**
inscription à l'ordre du jour	**inclusion on the agenda**
instruction générale du Bureau	**general instructions of the *Bureau***
intersession	**parliamentary recess**

Français	English
intervention	**speech**
invalidation	**declaration of invalidity of election result**
investiture	**nomination**
inviolabilité	**immunity from custodial measures**
irrecevabilité	**inadmissibility**
irresponsabilité	**immunity from defamation**
isoloir	**voting booth**
J	
« je mets aux voix... »	**"I call for a vote upon …."**
Journal officiel (de la République française)	**Official publication (of the French republic)**
journaliste accrédité	**accredited reporter**
jour de séance	**day of sitting**
juge	**judge**
jurisprudence	**case law, jurisprudence**
L	
lecture	**reading**
législateur	**lawmaker, legislator, parliamentarian**
législature	**term of Parliament**
levée de séance	**closing of the sitting**
libertés publiques	**public freedom**
liste électorale	**electoral register**
lobbyiste	**Lobbyist**
loi	**law, act, statute ®**
loi autorisant la ratification des traités	**law authorizing the ratification of a treaty**
loi constitutionnelle	**constitutional law**
loi de finances (ou budget)	**finance (or budget) law**
loi de finances rectificative	**corrected finance law**
loi de financement de la sécurité sociale	**social security finance law**
loi d'habilitation	**enabling law**
loi organique	**institutional law**
loi organique relative aux lois de finances (LOLF)	**institutional law on finance laws**
loi de programme	**programme law**
loi référendaire	**law on referendum**
loi de règlement	**financial settlement law**
M	
maire	**mayor**
majorité	**governing/ruling majority**
majorité absolue	**absolute majority**
majorité qualifiée	**qualified majority**
majorité relative	**relative majority**

Français	English
mandat	**term of office**
mandat impératif	**binding instruction**
message	**message**
ministre	**minister**
ministre chargé des relations avec le parlement	**minister in charge of relations with parliament**
mise en accusation	**indictment**
mission d'évaluation et de contrôle	**assessment and monitoring mission**
mission d'évaluation et de contrôle des lois de financement de la sécurité sociale	**assessment and monitoring mission on social security finance laws**
mission d'information	**fact-finding mission**
mode de scrutin	**voting system**
monocamérisme et monocaméralisme	**monocameralism**
motion de censure	**censure motion, motion of no confidence**
motion de procédure	**procedural motion**
motion de renvoi en commission	**motion of referral to committee**
N	
navette	**parliamentary "shuttle"**
« niche »	**"time slot" on agenda when business is decided by the Assembly**
nomination	**appointment**
non inscrit	**non-enrolled (M.P.)**
nouvelle délibération	**new consideration (of a bill)**
nouvelle lecture	**new reading**
O	
obstruction	**filibustering**
Office parlementaire	**Parliamentary office**
Office parlementaire d'évaluation des choix scientifiques et technologiques	**Parliamentary office for scientific and technological assessment**
Office parlementaire d'évaluation de la législation	**Parliamentary office for the assessment of legislation**
Office parlementaire d'évaluation des politiques de santé	**Parliamentary office for the assessment of health policy**
opposition	**opposition**
orateur	**speaker**
orateur contre	**speaker against, speaker with a contrary view**
orateur pour	**speaker for**
ordonnance	**ordinance**
ordre de discussion	**order of discussion**
ordre du jour	**agenda**
« l'ordre du jour appelle... »	**"the next item on the agenda is…"**
ordre du jour complémentaire	**supplementary agenda**

Français	English
ordre du jour prioritaire	**priority agenda**
organisation des débats	**organization of debates**
organisme extraparlementaire	**extra-parliamentary body**
ouverture de la séance	**opening of the sitting**
ouverture de la session	**opening of the session**

P

parité	**gender equality**
parlement	**parliament**
parlement des enfants	**children's parliament**
parlementaire	**parliamentary or parliamentarian**
parlementarisme rationalisé	**rationalized parliamentarism**
« la parole est à... »	**"mr/ms…has the floor"**
parti politique	**political party**
« perchoir »	**president's chair, "perch"**
« petite loi »	**name for a bill during the "shuttle"**
pétition	**petition**
« plateau »	**area surrounding the president's chair**
pouvoirs publics	**public authorities**
porte-parole	**spokesperson**
pouvoir exécutif	**executive branch/power**
pouvoir législatif	**legislative branch**
pouvoir règlementaire	**regulatory power**
préambule de la constitution	**preamble of the constitution**
Premier ministre	**Prime minister**
première lecture	**first reading**
présidence	**presidency**
président de commission	**committee chairman©**
Président de l'Assemblée nationale	**President of the National Assembly**
Président de la République	**President of the Republic**
président de séance	**president of the sitting**
prestation de serment	**swearing of the oath**
procédure d'examen simplifié	**simplified examination procedure**
procédure législative	**legislative procedure**
procès-verbal	**minutes/verbatim report**
proclamation	**declaration**
profession de foi	**profession of faith**
programme électoral	**electoral platform**
programme législatif	**legislative agenda**
projet de directive européenne	**draft European directive**
projet de règlement européen	**draft European regulation**
projet de loi	**bill**
promulgation	**promulgation, presidential signature**

Français	English
proposition de loi	**members' bill**
proposition de résolution	**draft motion/resolution**
protocole	**protocol**
publicité des travaux	**public nature of proceedings**
Q	
questeurs	**questeurs**
questure	**questure**
question de confiance	**confidence motion**
question préalable	**preliminary question**
questions écrites	**written questions**
questions au gouvernement	**government question time**
questions orales	**oral questions**
quorum	**quorum**
R	
rappel au règlement	**point of order**
rapport	**report**
rapport d'information	**information report**
rapporteur pour avis	**consultative *rapporteur***
rapporteur général	**general rapporteur**
rapporteur spécial	**special rapporteur**
ratification	**ratification**
recevabilité financière	**financial admissibility**
recevabilité législative	**legislative admissibility**
recueil des lois	**compendium of laws**
référendum	**referendum**
règlement (de l'Assemblée nationale)	**rules of procedure (of the National assembly)**
rejet	**rejection**
remaniement ministériel	**ministerial reshuffle**
renvoi en commission	**referral to a committee**
répartition du temps de parole	**allocation of speaking time**
représentation proportionnelle	**proportional representation**
résolution	**resolution, motion**
responsabilité devant le Parlement (du gouvernement)	**accountability before the Parliament (of the government)**
ressources publiques	**public resources**
retrait de l'ordre du jour	**withdrawal from the agenda**
révision constitutionnelle	**constitutional revision**
S	
saisine	**referal (to committee etc.)**
salle des séances	**(debating) chamber**
scrutateur	**teller**

Français	English
scrutin public	**secret ballot**
scrutin dans les salles voisines	**public ballot**
scrutin secret	**ballot in adjoining rooms**
scrutin à la tribune	**ballot at the rostrum**
scrutin uninominal majoritaire à deux tours	**uninominal majority ballot in two rounds**
séance publique	**plenary sitting**
seconde délibération	**second consideration**
secrétaire administratif	**administrative secretary**
secrétaire du bureau	**secretary of the *bureau***
secrétaire général	**general secretary**
secrétaire des services	**departmental secretary**
Secrétariat général du gouvernement	**General secretariat of the government**
Sénat	**Senate**
sénateur	**senator**
service de la séance	**table office**
session de droit	**session as of right**
session extraordinaire	**extraordinary session**
session ordinaire	**ordinary session**
session unique	**single session**
sous-amendement	**sub-amendment**
statut du personnel parlementaire	**status of parliamentary staff**
suffrages exprimés	**votes cast**
suffrage universel	**universal suffrage**
suppléant	**substitute**
« sur pièces et sur place »	**access to all evidence**
suspension de séance	**suspension of the sitting**
T	
tableau comparatif	**comparative table**
temps de parole	**allotted time for speaking**
texte en discussion	**text under discussion**
texte règlementaire	**regulatory text**
tour de parole	**turn to take the floor**
traité	**treaty**
travaux préparatoires	**preparatory work**
tribune	**speaker’s rostrum**
tribunes	**galleries**
« trombinoscope »	**official directory of notes on, and portraits of, M.P.s**
U	
unanimité	**unanimity**
Union interparlementaire	**Interparliamentary union**
urgence	**urgency**
urne	**ballot box**

Français	English

V

vacances de sièges, de postes	**vacancy of a seat or a position**
veto	**veto**
vice-président	**vice-president**
voix consultative (avec)	**on a consultative basis**
vote bloqué	**forced vote**
vote par division	**vote by division**
vote électronique	**electronic vote**
vote à main levée	**vote by show of hands**
vote par assis et levé	**sitting or standing vote**
vote personnel	**personal vote**
vote sans débat	**vote without debate**
vote sur l'ensemble	**vote on an entire bill**

① *The notion of "Bureau" does not really exist in the main Anglophone parliaments. Its translation by the word "board", sometimes used, is unsatisfactory, as the latter usually refers to management bodies in the private sector.*

② *In most Anglophone parliaments and international organisations, the "commissions permanentes" are called "standing committees" (rather than "commissions").*

③ *In almost all Anglophone parliaments, and in particular in the British Parliament and in the Canadian Parliament (the largest French-English bilingual parliament), the members of the lower House are the only ones to be referred to as M.P.s (Members of Parliament. Generally speaking, the French term "les parlementaires" is translated "parliamentarians" or « Members of the Houses of Parliament ».*

④ *In many Anglophone countries, "loi" is translated "law". This is the translation generally used in this volume. "Act of parliament" is a synonym and is used in particular in the United Kingdom. « Statute » is a generic term referring to "la Loi".*

⑤ *In Anglophone parliaments, the three words "speaker", "president" and "chairman" are used. They refer to different offices according to each specific parliament. We chose in this volume to translate the title "président de l'Assemblée nationale" by "president of the National assembly", as the term "speaker" is too closely associated with the British parliamentary model and the term "Chairman" tends to reduce this office to the mere presidency of the plenary sitting. Nonetheless, we decided to use the term « Chairman » to translate the French titles "président de commission" and "président de groupe politique".*

Constitution of October 4, 1958

NOTE

1° The version in italics of article 11 of the Constitution comes into effect in the manner determined by statutes and Institutional Acts necessary for their application by virtue of the article 46 of the Constitutional Act no. 2008-724 of July 23, 2008;

2° Article 88-5 is not applicable to memberships following an intergovernmental conference convened by the European Council before July 1, 2004, by virtue of article 47 of Constitutional Act n° 2008-724 of July 23, 2008.

PREAMBLE

The French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946, and to the rights and duties as defined in the Charter for the Environment of 2004.

By virtue of these principles and that of the self-determination of peoples, the Republic offers to the overseas territories which have expressed the will to adhere to them new institutions founded on the common ideal of liberty, equality and fraternity and conceived for the purpose of their democratic development.

Article 1

France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organised on a decentralised basis.

Statutes shall promote equal access by women and men to elective offices and posts as well as to position of professional and social responsibility.

TITLE I

ON SOVEREIGNTY

Article 2

The language of the Republic shall be French.

The national emblem shall be the blue, white and red tricolour flag.

The national anthem shall be *La Marseillaise*.

The maxim of the Republic shall be “Liberty, Equality, Fraternity”.

The principle of the Republic shall be: government of the people, by the people and for the people.

Article 3

National sovereignty shall vest in the people, who shall exercise it through their representatives and by means of referendum.

No section of the people nor any individual may arrogate to itself, or to himself, the exercise thereof.

Suffrage may be direct or indirect as provided for by the Constitution. It shall always be universal, equal and secret.

All French citizens of either sex who have reached their majority and are in possession of their civil and political rights may vote as provided for by statute.

Article 4

Political parties and groups shall contribute to the exercise of suffrage. They shall be formed and carry on their activities freely. They shall respect the principles of national sovereignty and democracy.

They shall contribute to the implementation of the principle set out in the second paragraph of article 1 as provided for by statute.

Statutes shall guarantee the expression of diverse opinions and the equitable participation of political parties and groups in the democratic life of the Nation.

TITLE II

THE PRESIDENT OF THE REPUBLIC

Article 5

The President of the Republic shall ensure due respect for the Constitution. He shall ensure, by his arbitration, the proper functioning of the public authorities and the continuity of the State.

He shall be the guarantor of national independence, territorial integrity and due respect for Treaties.

Article 6

The President of the Republic shall be elected for a term of five years by direct universal suffrage.

No one may hold office for more than two consecutive terms.

The manner of implementation of this article shall be determined by an Institutional Act.

Article 7

The President of the Republic shall be elected by an absolute majority of votes cast. If such a majority is not obtained on the first ballot, a second ballot shall take place on the fourteenth day thereafter. Only the two candidates polling the greatest number of votes in the first ballot, after any withdrawal of better placed candidates, may stand in the second ballot.

The process of electing a President shall commence by the calling of said election by the Government.

The election of the new President shall be held no fewer than twenty days and no more than thirty-five days before the expiry of the term of the President in office.

Should the Presidency of the Republic fall vacant for any reason whatsoever, or should the Constitutional Council on a referral from the Government rule by an absolute majority of its members that the President of the Republic is incapacitated, the duties of the President of the Republic, with the exception of those specified in articles 11 and 12, shall be temporarily exercised by the President of the Senate or, if the latter is in turn incapacitated, by the Government.

In the case of a vacancy, or where the incapacity of the President is declared to be permanent by the Constitutional Council, elections for the new President shall, except in the event of a finding by the Constitutional Council of force majeure, be held no fewer than twenty days and no more than thirty-five days after the beginning of the vacancy or the declaration of permanent incapacity.

In the event of the death or incapacitation in the seven days preceding the deadline for registering candidacies of any of the persons who, fewer than thirty days prior to such deadline, have publicly announced their decision to stand for election, the Constitutional Council may decide to postpone the election.

If, before the first round of voting, any of the candidates dies or becomes incapacitated, the Constitutional Council shall declare the election to be postponed.

In the event of the death or incapacitation of either of the two candidates in the lead after the first round of voting before any withdrawals, the Constitutional Council shall declare that the electoral process must be repeated in full; the same shall apply in the event of the death or incapacitation of either of the two candidates still standing on the second round of voting.

All cases shall be referred to the Constitutional Council in the manner laid down in the second paragraph of article 61 or in that laid down for the registration of candidates in the Institutional Act provided for in article 6.

The Constitutional Council may extend the time limits set in paragraphs three and five above, provided that polling takes place no later than thirty-five days after the decision of the Constitutional Council. If the implementation of the provisions of this paragraph results in the postponement of the election beyond the expiry of the term of the President in office, the latter shall remain in office until his successor is proclaimed.

Neither articles 49 and 50 nor article 89 of the Constitution shall be implemented during the vacancy of the Presidency of the Republic or during the period between the declaration of the permanent incapacity of the President of the Republic and the election of his successor.

Article 8

The President of the Republic shall appoint the Prime Minister. He shall terminate the appointment of the Prime Minister when the latter tenders the resignation of the Government.

On the recommendation of the Prime Minister, he shall appoint the other members of the Government and terminate their appointments.

Article 9

The President of the Republic shall preside over the Council of Ministers.

Article 10

The President of the Republic shall promulgate Acts of Parliament within fifteen days following the final passage of an Act and its transmission to the Government.

He may, before the expiry of this time limit, ask Parliament to reopen debate on the Act or any sections thereof. Such reopening of debate shall not be refused.

Article 11

The President of the Republic may, on a recommendation from the Government when Parliament is in session, or on a joint motion of the two Houses, published in the *Journal officiel*, submit to a referendum any Government Bill which deals with the organization of the public authorities, or with reforms relating to the economic or social policy of the Nation, and to the public services contributing thereto, or which provides for authorization to ratify a treaty which, although not contrary to the Constitution, would affect the functioning of the institutions.

Where the referendum is held on the recommendation of the Government, the latter shall make a statement before each House and the same shall be followed by a debate.

Where the outcome of the referendum is favourable to the Government Bill or to the Private Member's Bill, the President of the Republic shall promulgate the resulting statute within fifteen days following the proclamation of the results of the vote.

Article 11

The President of the Republic may, on a recommendation from the Government when Parliament is in session, or on a joint motion of the two Houses, published in the Journal officiel*, submit to a referendum any Government Bill which deals with the organization of the public authorities, or with reforms relating to the economic, social or environmental policy of the Nation, and to the public services contributing thereto, or which provides for authorization to ratify a treaty which, although not contrary to the Constitution, would affect the functioning of the institutions.*

Where the referendum is held on the recommendation of the Government, the latter shall make a statement before each House and the same shall be followed by a debate.

A referendum concerning a subject mentioned in the first paragraph may be held upon the initiative of one fifth of the Members of Parliament, supported by one tenth of the voters enrolled on the electoral register. This initiative shall take the form of a Private Member's Bill and shall not be applied to the repeal of a statutory provision promulgated for less than one year.

The conditions by which it is introduced and those according to which the Constitutional Council monitors the respect of the provisions of the previous paragraph, are set down by an Institutional Act.

If the Private Member's Bill has not been considered by the two Houses within a period set by the Institutional Act, the President of the Republic shall submit it to a referendum.

Where the decision of the French people in the referendum is not favourable to the Private Member's Bill, no new referendum proposal on the same subject may be submitted before the end of a period of two years following the date of the vote.

Article 12

The President of the Republic may, after consulting the Prime Minister and the Presidents of the Houses of Parliament, declare the National Assembly dissolved.

A general election shall take place no fewer than twenty days and no more than forty days after the dissolution.

The National Assembly shall sit as of right on the second Thursday following its election. Should this sitting fall outside the period prescribed for the ordinary session, a session shall be convened by right for a fifteen-day period.

No further dissolution shall take place within a year following said election.

Article 13

The President of the Republic shall sign the Ordinances and Decrees deliberated upon in the Council of Ministers.

He shall make appointments to the civil and military posts of the State.

Conseillers d'État, the *Grand Chancelier* de la *Légion d'Honneur*, Ambassadors and Envoys Extraordinary, *Conseillers Maîtres* of the*Cour des Comptes*, Prefects, State representatives in the overseas communities to which article 74 applies and in New Caledonia, highest-ranking Military Officers, *Recteurs des Académies* and Directors of Central Government Departments shall be appointed in the Council of Ministers.

An Institutional Act shall determine the other posts to be filled at meetings of the Council of Ministers and the manner in which the power of the President of the Republic to make appointments may be delegated by him to be exercised on his behalf.

An Institutional Act shall determine the posts or positions, other than those mentioned in the third paragraph, concerning which, on account of their importance in the guaranteeing of the rights and freedoms or the economic and social life of the Nation, the power of appointment vested in the President of the Republic shall be exercised after public consultation with the relevant standing committee in each House. The President of the Republic shall not make an appointment when the sum of the negative votes in each committee represents at least three fifths of the votes cast by the two committees. Statutes shall determine the relevant standing committees according to the posts or positions concerned.

Article 14

The President of the Republic shall accredit ambassadors and envoys extraordinary to foreign powers; foreign ambassadors and envoys extraordinary shall be accredited to him.

Article 15

The President of the Republic shall be Commander-in-Chief of the Armed Forces. He shall preside over the higher national defence councils and committees.

Article 16

Where the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are under serious and immediate threat, and where the proper functioning of the constitutional public authorities is interrupted, the President of the Republic shall take measures required by these circumstances, after formally consulting the Prime Minister, the Presidents of the Houses of Parliament and the Constitutional Council.

He shall address the Nation and inform it of such measures.

The measures shall be designed to provide the constitutional public authorities as swiftly as possible, with the means to carry out their duties. The Constitutional Council shall be consulted with regard to such measures.

Parliament shall sit as of right.

The National Assembly shall not be dissolved during the exercise of such emergency powers.

After thirty days of the exercise of such emergency powers, the matter may be referred to the Constitutional Council by the President of the National Assembly, the President of the Senate, sixty Members of the National Assembly or sixty Senators, so as to decide if the conditions laid down in paragraph one still apply. The Council shall make its decision publicly as soon as possible. It shall, as of right, carry out such an examination and shall make its decision in the same manner after sixty days of the exercise of emergency powers or at any moment thereafter.

Article 17

The President of the Republic is vested with the power to grant individual pardons.

Article 18

The President of the Republic shall communicate with the two Houses of Parliament by messages which he shall cause to be read aloud and which shall not give rise to any debate.

He may take the floor before Parliament convened in Congress for this purpose. His statement may give rise, in his absence, to a debate without vote.

When not in session, the Houses of Parliament shall be convened especially for this purpose.

Article 19

Instruments of the President of the Republic, other than those provided for under articles 8 (paragraph one), 11, 12, 16, 18, 54, 56 and 61, shall be countersigned by the Prime Minister and, where required, by the ministers concerned.

TITLE III

THE GOVERNMENT

Article 20

The Government shall determine and conduct the policy of the Nation.

It shall have at its disposal the civil service and the armed forces.

It shall be accountable to Parliament in accordance with the terms and procedures set out in articles 49 and 50.

Article 21

The Prime Minister shall direct the actions of the Government. He shall be responsible for national defence. He shall ensure the implementation of legislation. Subject to article 13, he shall have power to make regulations and shall make appointments to civil and military posts.

He may delegate certain of his powers to Ministers.

He shall deputize, if the case arises, for the President of the Republic as chairman of the councils and committees referred to in article 15.

He may, in exceptional cases, deputize for him as chairman of a meeting of the Council of Ministers by virtue of an express delegation of powers for a specific agenda.

Article 22

Instruments of the Prime Minister shall be countersigned, where required, by the ministers responsible for their implementation.

Article 23

Membership of the Government shall be incompatible with the holding of any Parliamentary office, any position of professional representation at national level, any public employment or any professional activity.

An Institutional Act shall determine the manner in which the holders of such offices, positions or employment shall be replaced.

The replacement of Members of Parliament shall take place in accordance with the provisions of article 25.

TITLE IV

PARLIAMENT

Article 24

Parliament shall pass statutes. It shall monitor the action of the Government. It shall assess public policies.

It shall comprise the National Assembly and the Senate.

Members of the National Assembly, whose number shall not exceed five hundred and seventy-seven, shall be elected by direct suffrage.

The Senate, whose members shall not exceed three hundred and forty-eight, shall be elected by indirect suffrage. The Senate shall ensure the representation of the territorial communities of the Republic.

French nationals living abroad shall be represented in the National Assembly and in the Senate.

Article 25

An Institutional Act shall determine the term for which each House is elected, the number of its members, their allowances, the conditions of eligibility and the terms of disqualification and of incompatibility with membership.

It shall likewise determine the manner of election of those persons called upon to replace Members of the National Assembly or Senators whose seats have become vacant, until the general or partial renewal by election of the House in which they sat, or have been temporarily replaced on account of having accepted a position in Government.

An independent commission, whose composition and rules of organization and operation shall be set down by statute, shall publicly express an opinion on the Government and Private Members' Bills defining the constituencies for the election of Members of the National Assembly, or modifying the distribution of the seats of Members of the National Assembly or of Senators.

Article 26

No Member of Parliament shall be prosecuted, investigated, arrested, detained or tried in respect of opinions expressed or votes cast in the performance of his official duties.

No Member of Parliament shall be arrested for a serious crime or other major offence, nor shall he be subjected to any other custodial or semi-custodial measure, without the authorization of the Bureau of the House of which he is a member. Such authorization shall not be required in the case of a serious crime or other major offence committed *flagrante delicto* or when a conviction has become final.

The detention, subjecting to custodial or semi-custodial measures, or prosecution of a Member of Parliament shall be suspended for the duration of the session if the House of which he is a member so requires.

The House concerned shall meet as of right for additional sittings in order to permit the application of the foregoing paragraph should circumstances so require.

Article 27

No Member shall be elected with any binding mandate.

Members' right to vote shall be exercised in person.

An Institutional Act may, in exceptional cases, authorize voting by proxy. In that event, no Member shall be given more than one proxy.

Article 28

Parliament shall sit as of right in one ordinary session which shall start on the first working day of October and shall end on the last working day of June.

The number of days for which each House may sit during the ordinary session shall not exceed one hundred and twenty. The number of sitting weeks shall be determined by each House.

The Prime Minister, after consulting the President of the House concerned or the majority of the members of each House may decide that said House shall meet for additional sitting days.

The days and hours of sittings shall be determined by the Rules of Procedure of each House.

Article 29

Parliament shall meet in extraordinary session, at the request of the Prime Minister or of the majority of the Members of the National Assembly, to debate a specific agenda.

Where an extraordinary session is held at the request of Members of the National Assembly, this session shall be closed by decree once all the items on the agenda for which Parliament was convened have been dealt with, or not later than twelve days after its first sitting, whichever shall be the earlier.

The Prime Minister alone may request a new session before the end of the month following the decree closing an extraordinary session.

Article 30

Except where Parliament sits as of right, extraordinary sessions shall be opened and closed by a Decree of the President of the Republic.

Article 31

Members of the Government shall have access to both Houses. They shall address either House whenever they so request.

They may be assisted by commissaires du Gouvernement.

Article 32

The President of the National Assembly shall be elected for the life of a Parliament. The President of the Senate shall be elected each time elections are held for partial renewal of the Senate.

Article 33

The sittings of the two Houses shall be public. A verbatim report of the debates shall be published in the *Journal officiel.*

Each House may sit in camera at the request of the Prime Minister or of one tenth of its members.

TITLE V

ON RELATIONS BETWEEN PARLIAMENT AND THE GOVERNMENT

Article 34

Statutes shall determine the rules concerning:

– civic rights and the fundamental guarantees granted to citizens for the exercise of their civil liberties; freedom, diversity and the independence of the media; the obligations imposed for the purposes of national defence upon the person and property of citizens;

– nationality, the status and capacity of persons, matrimonial property systems, inheritance and gifts;

– the determination of serious crimes and other major offences and the penalties they carry; criminal procedure; amnesty; the setting up of new categories of courts and the status of members of the Judiciary;

– the base, rates and methods of collection of all types of taxes; the issuing of currency.

Statutes shall also determine the rules governing:

– the system for electing members of the Houses of Parliament, local assemblies and the representative bodies for French nationals living abroad, as well as the conditions for holding elective offices and positions for the members of the deliberative assemblies of the territorial communities;

– the setting up of categories of public legal entities;

– the fundamental guarantees granted to civil servants and members of the Armed Forces;

– nationalisation of companies and the transfer of ownership of companies from the public to the private sector.

Statutes shall also lay down the basic principles of:

– the general organisation of national defence;

– the self-government of territorial communities, their powers and revenue;

– education;

– the preservation of the environment;

– systems of ownership, property rights and civil and commercial obligations;

– Employment law, Trade Union law and Social Security.

Finance Acts shall determine the revenue and expenditure of the State in the conditions and with the reservations provided for by an Institutional Act.

Social Security Financing Acts shall lay down the general conditions for the financial equilibrium thereof, and taking into account forecasted revenue, shall determine expenditure targets in the conditions and with the reservations provided for by an Institutional Act.

Programming Acts shall determine the objectives of the action of the State.

The multiannual guidelines for public finances shall be established by Programming Acts. They shall contribute to achieving the objective of balanced accounts for public administrations.

The provisions of this article may be further specified and completed by an Institutional Act.

Article 34-1

The Houses of Parliament may adopt resolutions according to the conditions determined by the Institutional Act.

Any draft resolution, whose adoption or rejection would be considered by the Government as an issue of confidence, or which contained an injunction to the Government, shall be inadmissible and may not be included on the agenda.

Article 35

A declaration of war shall be authorized by Parliament.

The Government shall inform Parliament of its decision to have the armed forces intervene abroad, at the latest three days after the beginning of said intervention. It shall detail the objectives of the said intervention. This information may give rise to a debate, which shall not be followed by a vote.

Where the said intervention shall exceed four months, the Government shall submit the extension to Parliament for authorization. It may ask the National Assembly to make the final decision.

If Parliament is not sitting at the end of the four-month period, it shall express its decision at the opening of the following session.

Article 36

A state of siege shall be decreed in the Council of Ministers.

The extension thereof after a period of twelve days may be authorized solely by Parliament.

Article 37

Matters other than those coming under the scope of statute law shall be matters for regulation.

Provisions of statutory origin enacted in such matters may be amended by decree issued after consultation with the *Conseil d'État*. Any such provisions passed after the coming into force of the Constitution shall be amended by decree only if the Constitutional Council has found that they are matters for regulation as defined in the foregoing paragraph.

Article 37-1

Statutes and regulations may contain provisions enacted on an experimental basis for limited purposes and duration.

Article 38

In order to implement its programme, the Government may ask Parliament for authorization, for a limited period, to take measures by Ordinance that are normally the preserve of statute law.

Ordinances shall be issued in the Council of Ministers, after consultation with the *Conseil d'État*. They shall come into force upon publication, but shall lapse in the event of failure to table before Parliament the Bill to ratify them by the date set by the Enabling Act. They may only be ratified in explicit terms.

At the end of the period referred to in the first paragraph hereinabove Ordinances may be amended solely by an Act of Parliament in those areas governed by statute law.

Article 39

Both the Prime Minister and Members of Parliament shall have the right to initiate legislation.

Government Bills shall be discussed in the Council of Ministers after consultation with the *Conseil d'État* and shall be tabled in one or other of the two Houses. Finance Bills and Social Security Financing Bills shall be tabled first before the National Assembly. Without prejudice to the first paragraph of article 44, Bills primarily dealing with the organisation of territorial communities shall be tabled first in the Senate.

The tabling of Government Bills before the National Assembly or the Senate, shall comply with the conditions determined by an Institutional Act.

Government Bills may not be included on the agenda if the Conference of Presidents of the first House to which the Bill has been referred, declares that the rules determined by the Institutional Act have not been complied with. In the case of disagreement between the Conference of Presidents and the Government, the President of the relevant House or the Prime Minister may refer the matter to the Constitutional Council, which shall rule within a period of eight days.

Within the conditions provided for by statute, the President of either House may submit a Private Member's Bill tabled by a Member of the said House, before it is considered in committee, to the *Conseil d'État* for its opinion, unless the Member who tabled it disagrees.

Article 40

Private Members' Bills and amendments introduced by Members of Parliament shall not be admissible where their enactment would result in either a diminution of public revenue or the creation or increase of any public expenditure.

Article 41

If, during the legislative process, it appears that a Private Member's Bill or amendment is not a matter for statute or is contrary to a delegation granted under article 38, the Government or the President of the House concerned, may argue that it is inadmissible.

In the event of disagreement between the Government and the President of the House concerned, the Constitutional Council, at the request of one or the other, shall give its ruling within eight days.

Article 42

The discussion of Government and Private Members' Bills shall, in plenary sitting, concern the text passed by the committee to which the Bill has been referred, in accordance with article 43, or failing that, the text which has been referred to the House.

Notwithstanding the foregoing, the plenary discussion of Constitutional Revision Bills, Finance Bills and Social Security Financing Bills, shall concern, during the first reading before the House to which the Bill has been referred in the first instance, the text presented by the Government, and during the subsequent readings, the text transmitted by the other House.

The plenary discussion at first reading of a Government or Private Members' Bill may only occur before the first House to which it is referred, at the end of a period of six weeks after it has been tabled. It may only occur, before the second House to which it is referred, at the end of a period of four weeks, from the date of transmission.

The previous paragraph shall not apply if the accelerated procedure has been implemented according to the conditions provided for in article 45. Neither shall it appl to Finance Bills, Social Security Financing Bills, or to Bills concerning a state of emergency.

Article 43

Government and Private Members' Bills shall be referred to one of the standing committees, the number of which shall not exceed eight in each House.

At the request of the Government or of the House before which such a bill has been tabled, Government and Private Members' Bills shall be referred for consideration to a committee specially set up for this purpose.

Article 44

Members of Parliament and the Government shall have the right of amendment. This right may be used in plenary sitting or in committee under the conditions set down by the Rules of Procedure of the Houses, according to the framework determined by an Institutional Act.

Once debate has begun, the Government may object to the consideration of any amendment which has not previously been referred to committee.

If the Government so requests, the House before which the Bill is tabled shall proceed to a single vote on all or part of the text under debate, on the sole basis of the amendments proposed or accepted by the Government.

Article 45

Every Government or Private Member's Bill shall be considered successively in the two Houses of Parliament with a view to the passing of an identical text. Without prejudice to the application of articles 40 and 41, all amendments which have a link, even an indirect one, with the text that was tabled or transmitted, shall be admissible on first reading.

If, as a result of a failure to agree by the two Houses, it has proved impossible to pass a Government or Private Member's Bill after two readings by each House or, if the Government has decided to apply the accelerated procedure without the two

Conferences of Presidents being jointly opposed, after a single reading of such a Bill by each House, the Prime Minister, or in the case of a Private Members' Bill, the Presidents of the two Houses acting jointly, may convene a joint committee, composed of an equal number of members from each House, to propose a text on the provisions still under debate.

The text drafted by the joint committee may be submitted by the Government to both Houses for approval. No amendment shall be admissible without the consent of the Government.

If the joint committee fails to agree on a common text, or if the text is not passed as provided in the foregoing paragraph, the Government may, after a further reading by the National Assembly and by the Senate, ask the National Assembly to reach a final decision. In such an event, the National Assembly may reconsider either the text drafted by the joint committee, or the last text passed by itself, as modified, as the case may be, by any amendment(s) passed by the Senate.

Article 46

Acts of Parliament which are defined by the Constitution as being Institutional Acts shall be enacted and amended as provided for hereinafter.

The Government or Private Member's Bill may only be submitted, on first reading, to the consideration and vote of the Houses after the expiry of the periods set down in the third paragraph of article 42. Notwithstanding the foregoing, if the accelerated procedure has been applied according to the conditions provided for in article 45, the Government or Private Member's Bill may not be submitted for consideration by the first House to which it is referred before the expiry of a fifteen-day period after it has been tabled.

The procedure set out in article 45 shall apply. Nevertheless, failing agreement between the two Houses, the text may be passed by the National Assembly on a final reading only by an absolute majority of the Members thereof.

Institutional Acts relating to the Senate must be passed in identical terms by the two Houses.

Institutional Acts shall not be promulgated until the Constitutional Council has declared their conformity with the Constitution.

Article 47

Parliament shall pass Finance Bills in the manner provided for by an Institutional Act.

Should the National Assembly fail to reach a decision on first reading within forty days following the tabling of a Bill, the Government shall refer the Bill to the Senate, which shall make its decision known within fifteen days. The procedure set out in article 45 shall then apply.

Should Parliament fail to reach a decision within seventy days, the provisions of the Bill may be brought into force by Ordinance.

Should the Finance Bill setting out revenue and expenditure for a financial year not be tabled in time for promulgation before the beginning of that year, the Government shall as a matter of urgency ask Parliament for authorization to collect taxes and shall make available by decree the funds needed to meet commitments already voted for.

The time limits set by this article shall be suspended when Parliament is not in session.

Article 47-1

Parliament shall pass Social Security Financing Bills in the manner provided by an Institutional Act.

Should the National Assembly fail to reach a decision on first reading within twenty days of the tabling of a Bill, the Government shall refer the Bill to the Senate, which shall make its decision known within fifteen days. The procedure set out in article 45 shall then apply.

Should Parliament fail to reach a decision within fifty days, the provisions of the Bill may be implemented by Ordinance.

The time limits set by this article shall be suspended when Parliament is not in session and, as regards each House, during the weeks when it has decided not to sit in accordance with the second paragraph of article 28.

Article 47-2

The *Cour des Comptes* shall assist Parliament in monitoring Government action. It shall assist Parliament and the Government in monitoring the implementation of Finance Acts and Social Security Financing Acts, as well in assessing public policies. By means of its public reports, it shall contribute to informing citizens.

The accounts of public administrations shall be lawful and faithful. They shall provide a true and fair view of the result of the management, assets and financial situation of the said public administrations.

Article 48

Without prejudice to the application of the last three paragraphs of article 28, the agenda shall be determined by each House.

During two weeks of sittings out of four, priority shall be given, in the order determined by the Government, to the consideration of texts and to debates which it requests to be included on the agenda.

In addition, the consideration of Finance Bills, Social Security Financing Bills and, subject to the provisions of the following paragraph, texts transmitted by the other

House at least six weeks previously, as well as Bills concerning a state of emergency and requests for authorization referred to in article 35, shall, upon Government request, be included on the agenda with priority.

During one week of sittings out of four, priority shall be given, in the order determined by each House, to the monitoring of Government action and to the assessment of public policies.

One day of sitting per month shall be given over to an agenda determined by each House upon the initiative of the opposition groups in the relevant House, as well as upon that of the minority groups.

During at least one sitting per week, including during the extraordinary sittings provided for in article 29, priority shall be given to questions from Members of Parliament and to answers from the Government.

Article 49

The Prime Minister, after deliberation by the Council of Ministers, may make the Government's programme or possibly a general policy statement an issue of a vote of confidence before the National Assembly.

The National Assembly may call the Government to account by passing a resolution of no-confidence. Such a resolution shall not be admissible unless it is signed by at least one tenth of the Members of the National Assembly. Voting may not take place within forty-eight hours after the resolution has been tabled. Solely votes cast in favour of the no-confidence resolution shall be counted and the latter shall not be passed unless it secures a majority of the Members of the House. Except as provided for in the following paragraph, no Member shall sign more than three resolutions of no-confidence during a single ordinary session and no more than one during a single extraordinary session.

The Prime Minister may, after deliberation by the Council of Ministers, make the passing of a Finance Bill or Social Security Financing Bill an issue of a vote of confidence before the National Assembly. In that event, the Bill shall be considered passed unless a resolution of no-confidence, tabled within the subsequent twenty-four hours, is carried as provided for in the foregoing paragraph. In addition, the Prime Minister may use the said procedure for one other Government or Private Members' Bill per session.

The Prime Minister may ask the Senate to approve a statement of general policy.

Article 50

When the National Assembly passes a resolution of no-confidence, or when it fails to endorse the Government programme or general policy statement, the Prime Minister shall tender the resignation of the Government to the President of the Republic.

Article 50-1

The Government may, before either House, upon its own initiative or upon the request of a parliamentary group, as set down in article 51-1, make a declaration on a given subject, which leads to a debate and, if it so desires, gives rise to a vote, without making it an issue of confidence.

Article 51

The closing of ordinary or extraordinary sessions shall be automatically postponed in order to permit the application of article 49, if the case arises. Additional sittings shall be held automatically for the same purpose.

Article 51-1

The Rules of Procedure of each House shall determine the rights of the parliamentary groups set up within it. They shall recognize that opposition groups in the House concerned, as well as minority groups, have specific rights.

Article 51-2

In order to implement the monitoring and assessment missions laid down in the first paragraph of article 24, committees of inquiry may be set up within each House to gather information, according to the conditions provided for by statute.

Statutes shall determine their rules of organization and operation. The conditions for their establishment shall be determined by the Rules of Procedure of each House.

TITLE VI

ON TREATIES AND INTERNATIONAL AGREEMENTS

Article 52

The President of the Republic shall negotiate and ratify treaties.

He shall be informed of any negotiations for the conclusion of an international agreement not subject to ratification.

Article 53

Peace Treaties, Trade agreements, treaties or agreements relating to international organization, those committing the finances of the State, those modifying provisions which are the preserve of statute law, those relating to the status of persons, and those involving the ceding, exchanging or acquiring of territory, may be ratified or approved only by an Act of Parliament.

They shall not take effect until such ratification or approval has been secured.

No ceding, exchanging or acquiring of territory shall be valid without the consent of the population concerned.

Article 53-1

The Republic may enter into agreements with European States which are bound by undertakings identical with its own in matters of asylum and the protection of human rights and fundamental freedoms, for the purpose of determining their respective jurisdiction as regards requests for asylum submitted to them.

However, even if the request does not fall within their jurisdiction under the terms of such agreements, the authorities of the Republic shall remain empowered to grant asylum to any foreigner who is persecuted for his action in pursuit of freedom or who seeks the protection of France on other grounds.

Article 53-2

The Republic may recognize the jurisdiction of the International Criminal Court as provided for by the Treaty signed on 18 July 1998.

Article 54

If the Constitutional Council, on a referral from the President of the Republic, from the Prime Minister, from the President of one or the other Houses, or from sixty Members of the National Assembly or sixty Senators, has held that an international undertaking contains a clause contrary to the Constitution, authorization to ratify or approve the international undertaking involved may be given only after amending the Constitution.

Article 55

Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party.

TITLE VII

THE CONSTITUTIONAL COUNCIL

Article 56

The Constitutional Council shall comprise nine members, each of whom shall hold office for a non-renewable term of nine years. One third of the membership of the Constitutional Council shall be renewed every three years. Three of its members shall be appointed by the President of the Republic, three by the President of the National Assembly and three by the President of the Senate. The procedure provided for in the last paragraph of article 13 shall apply to these appointments. The appointments made by the President of each House shall be submitted for the opinion solely of the relevant standing committee in that House.

In addition to the nine members provided for above, former Presidents of the Republic shall be ex officio life members of the Constitutional Council.

The President shall be appointed by the President of the Republic. He shall have a casting vote in the event of a tie.

Article 57

The office of member of the Constitutional Council shall be incompatible with that of Minister or Member of the Houses of Parliament. Other incompatibilities shall be determined by an Institutional Act.

Article 58

The Constitutional Council shall ensure the proper conduct of the election of the President of the Republic.

It shall examine complaints and shall proclaim the results of the vote.

Article 59

The Constitutional Council shall rule on the proper conduct of the election of Members of the National Assembly and Senators in disputed cases.

Article 60

The Constitutional Council shall ensure the proper conduct of referendum proceedings as provided for in articles 11 and 89 and in Title XV and shall proclaim the results of the referendum.

Article 61

Institutional Acts, before their promulgation, Private Members' Bills mentioned in article 11 before they are submitted to referendum, and the Rules of Procedure of the Houses of Parliament shall, before coming into force, be referred to the Constitutional Council, which shall rule on their conformity with the Constitution.

To the same end, Acts of Parliament may be referred to the Constitutional Council, before their promulgation, by the President of the Republic, the Prime Minister, the President of the National Assembly, the President of the Senate, sixty Members of the National Assembly or sixty Senators.

In the cases provided for in the two foregoing paragraphs, the Constitutional Council must deliver its ruling within one month. However, at the request of the Government, in cases of urgency, this period shall be reduced to eight days.

In these same cases, referral to the Constitutional Council shall suspend the time allotted for promulgation.

Article 61-1

If, during proceedings in progress before a court of law, it is claimed that a statutory provision infringes the rights and freedoms guaranteed by the Constitution, the matter may be referred by the Conseil d'État or by the Cour de Cassation to the Constitutional Council, within a determined period.

An Institutional Act shall determine the conditions for the application of the present article.

Article 62

A provision declared unconstitutional on the basis of article 61 shall be neither promulgated nor implemented.

A provision declared unconstitutional on the basis of article 61-1 shall be repealed as of the publication of the said decision of the Constitutional Council or as of a subsequent date determined by said decision. The Constitutional Council shall determine the conditions and the limits according to which the effects produced by the provision shall be liable to challenge.

No appeal shall lie from the decisions of the Constitutional Council. They shall be binding on public authorities and on all administrative authorities and all courts.

Article 63

An Institutional Act shall determine the rules of organization and operation of the Constitutional Council, the procedure to be followed before it and, in particular, the time limits allotted for referring disputes to it.

TITLE VIII

ON JUDICIAL AUTHORITY

Article 64

The President of the Republic shall be the guarantor of the independence of the Judicial Authority.

He shall be assisted by the High Council of the Judiciary.

An Institutional Act shall determine the status of members of the Judiciary.

Judges shall be irremovable from office.

Article 65

The High Council of the Judiciary shall consist of a section with jurisdiction over judges and a section with jurisdiction over public prosecutors.

The section with jurisdiction over judges shall be presided over by the Chief President of the Cour de cassation. It shall comprise, in addition, five judges and one public prosecutor, one Conseiller d'État appointed by the Conseil d'État and one practising lawyer, as well as six qualified, prominent citizens who are not Members of Parliament, of the Judiciary or of the administration. The President of the Republic, the President of the National Assembly and the President of the Senate shall each appoint two qualified, prominent citizens. The procedure provided for in the last paragraph of article 13 shall be applied to the appointments of the qualified, prominent citizens. The appointments made by the President of each House of Parliament shall be submitted for the sole opinion of the relevant standing committee in that House.

The section with jurisdiction over public prosecutors shall be presided over by the Chief Public Prosecutor at the Cour de Cassation. It shall comprise, in addition, five public prosecutors and one judge, as well as the Conseiller d'État and the practising lawyer, together with the six qualified, prominent citizens referred to in the second paragraph.

The section of the High Council of the Judiciary with jurisdiction over judges shall make recommendations for the appointment of judges to the Cour de cassation, the Chief Presidents of Courts of Appeal and the Presidents of the Tribunaux de grande instance. Other judges shall be appointed after consultation with this section.

The section of the High Council of the Judiciary with jurisdiction over public prosecutors shall give its opinion on the appointment of public prosecutors.

The section of the High Council of the Judiciary with jurisdiction over judges shall act as disciplinary tribunal for judges. When acting in such capacity, in addition to the members mentioned in the second paragraph, it shall comprise the judge belonging to the section with jurisdiction over public prosecutors.

The section of the High Council of the Judiciary with jurisdiction over public prosecutors shall give its opinion on disciplinary measures regarding public prosecutors. When acting in such capacity, it shall comprise, in addition to the members mentioned in paragraph three, the public prosecutor belonging to the section with jurisdiction over judges.

The High Council of the Judiciary shall meet in plenary section to reply to the requests for opinions made by the President of the Republic in application of article 64. It shall also express its opinion in plenary section, on questions concerning the deontology of judges or on any question concerning the operation of justice which is referred to it by the Minister of Justice. The plenary section comprises three of the five judges mentioned in the second paragraph, three of the five prosecutors mentioned in the third paragraph as well as the Conseiller d'État, the practising lawyer and the six qualified, prominent citizens referred to in the second paragraph. It is presided over by the Chief President of the Cour de cassation who may be substituted by the Chief Public Prosecutor of this court.

The Minister of Justice may participate in all the sittings of the sections of the High Council of the Judiciary except those concerning disciplinary matters.

According to the conditions determined by an Institutional Act, a referral may be made to the High Council of the Judiciary by a person awaiting trial.

The Institutional Act shall determine the manner in which this article is to be implemented.

Article 66

No one shall be arbitrarily detained.

The Judicial Authority, guardian of the freedom of the individual, shall ensure compliance with this principle in the conditions laid down by statute.

Article 66-1

No one shall be sentenced to death.

TITLE IX

THE HIGH COURT

Article 67

The President of the Republic shall incur no liability by reason of acts carried out in his official capacity, subject to the provisions of Articles 53-2 and 68 hereof.

Throughout his term of office the President shall not be required to testify before any French Court of law or Administrative authority and shall not be the object of any civil proceedings, nor of any preferring of charges, prosecution or investigatory measures. All limitation periods shall be suspended for the duration of said term of office.

All actions and proceedings thus stayed may be reactivated or brought against the President one month after the end of his term of office.

Article 68

The President of the Republic shall not be removed from office during the term thereof on any grounds other than a breach of his duties patently incompatible with his continuing in office. Such removal from office shall be proclaimed by Parliament sitting as the High Court.

The proposal to convene the High Court adopted by one or other of the Houses of Parliament shall be immediately transmitted to the other House which shall make its decision known within fifteen days of receipt thereof.

The High Court shall be presided over by the President of the National Assembly. It shall give its ruling as to the removal from office of the President, by secret ballot, within one month. Its decision shall have immediate effect.

Rulings given hereunder shall require a majority of two thirds of the members of the House involved or of the High Court. No proxy voting shall be allowed. Only votes in favour of the removal from office or the convening of the High Court shall be counted.

An Institutional Act shall determine the conditions for the application hereof.

TITLE X

ON THE CRIMINAL LIABILITY OF THE GOVERNMENT

Article 68-1

Members of the Government shall be criminally liable for acts performed in the holding of their office and classified as serious crimes or other major offences at the time they were committed.

They shall be tried by the Court of Justice of the Republic.

The Court of Justice of the Republic shall be bound by such definition of serious crimes and other major offences and such determination of penalties as are laid down by statute.

Article 68-2

The Court of Justice of the Republic shall consist of fifteen members: twelve Members of Parliament, elected in equal number from among their ranks by the National Assembly and the Senate after each general or partial renewal by election of these Houses, and three judges of the *Cour de cassation*, one of whom shall preside over the Court of Justice of the Republic.

Any person claiming to be a victim of a serious crime or other major offence committed by a member of the Government in the holding of his office may lodge a complaint with a petitions committee.

This committee shall order the case to be either closed or forwarded to the Chief Public Prosecutor at the *Cour de cassation* for referral to the Court of Justice of the Republic.

The Chief Public prosecutor at the *Cour de cassation* may also make a referral *ex officio* to the Court of Justice of the Republic with the assent of the petitions committee.

An Institutional Act shall determine the manner in which this article is to be implemented.

Article 68-3

The provisions of this title shall apply to acts committed before its entry into force.

TITLE XI

THE ECONOMIC, SOCIAL AND ENVIRONMENTAL COUNCIL

Article 69

The Economic, Social and Environmental Council, on a referral from the Government, shall give its opinion on such Government Bills, draft Ordinances, draft Decrees, and Private Members' Bills as have been submitted to it.

A member of the Economic, Social and Environmental Council may be designated by the Council to present, to the Houses of Parliament, the opinion of the Council on such drafts, Government or Private Members' Bills as have been submitted to it.

A referral may be made to the Economic, Social and Environmental Council by petition, in the manner determined by an Institutional Act. After consideration of the petition, it shall inform the Government and Parliament of the pursuant action it proposes.

Article 70

The Economic, Social and Environmental Council may also be consulted by the Government or Parliament on any economic, social or environmental issue. The Government may also consult it on Programming Bills setting down the multiannual guidelines for public finances. Any plan or Programming Bill of an economic, social or environmental nature shall be submitted to it for its opinion.

Article 71

The composition of the Economic, Social and Environmental Council, which shall not exceed two hundred and thirty-three members, and its rules of proceeding shall be determined by an Institutional Act.

TITLE XI *A*

THE DEFENDER OF RIGHTS

Article 71-1

The Defender of Rights shall ensure the due respect of rights and freedoms by state administrations, territorial communities, public legal entities, as well as by all bodies carrying out a public service mission or by those that the Institutional Act decides fall within his remit.

Referral may be made to the Defender of Rights, in the manner determined by an Institutional Act, by every person who considers his rights to have been infringed by the operation of a public service or of a body mentioned in the first paragraph. He may act without referral.

The Institutional Act shall set down the mechanisms for action and the powers of the Defender of Rights. It shall determine the manner in which he may be assisted by third parties in the exercise of certain of his powers.

The Defender of Rights shall be appointed by the President of the Republic for a six-year, non-renewable term, after the application of the procedure provided for in the last paragraph of article 13. This position is incompatible with membership of the Government or membership of Parliament. Other incompatibilities shall be determined by the Institutional Act.

The Defender of Rights is accountable for his actions to the President of the Republic and to Parliament.

TITLE XII

ON TERRITORIAL COMMUNITIES

Article 72

The territorial communities of the Republic shall be the Communes, the Departments, the Regions, the Special-Status communities and the Overseas Territorial communities to which article 74 applies. Any other territorial community created, if need be, to replace one or more communities provided for by this paragraph shall be created by statute.

Territorial communities may take decisions in all matters arising under powers that can best be exercised at their level.

In the conditions provided for by statute, these communities shall be self-governing through elected councils and shall have power to make regulations for matters coming within their jurisdiction.

In the manner provided for by an Institutional Act, except where the essential conditions for the exercise of public freedoms or of a right guaranteed by the Constitution are affected, territorial communities or associations thereof may, where provision is made by statute or regulation, as the case may be, derogate on an experimental basis for limited purposes and duration from provisions laid down by statute or regulation governing the exercise of their powers.

No territorial community may exercise authority over another. However, where the exercising of a power requires the combined action of several territorial communities, one of those communities or one of their associations may be authorised by statute to organise such combined action.

In the territorial communities of the Republic, the State representative, representing each of the members of the Government, shall be responsible for national interests, administrative supervision and compliance with the law.

Article 72-1

The conditions in which voters in each territorial community may use their right of petition to ask for a matter within the powers of the community to be entered on the agenda of its Deliberative Assembly shall be determined by statute.

In the conditions determined by an Institutional Act, draft decisions or acts within the powers of a territorial community may, on the initiative of the latter, be submitted for a decision by voters of said community by means of a referendum.

When the creation of a special-status territorial community or modification of its organisation are contemplated, a decision may be taken by statute to consult the voters registered in the relevant communities. Voters may also be consulted on changes to the boundaries of territorial communities in the conditions determined by statute.

Article 72-2

Territorial communities shall enjoy revenue of which they may dispose freely in the conditions determined by statute.

They may receive all or part of the proceeds of taxes of all kinds. They may be authorised by statute to determine the basis of assessment and the rates thereof, within the limits set by such statutes.

Tax revenue and other own revenue of territorial communities shall, for each category of territorial community, represent a decisive share of their revenue. The conditions for the implementation of this rule shall be determined by an Institutional Act.

Whenever powers are transferred between central government and the territorial communities, revenue equivalent to that given over to the exercise of those powers shall also be transferred. Whenever the effect of newly created or extended powers is to increase the expenditure to be borne by territorial communities, revenue as determined by statute shall be allocated to said communities.

Equalisation mechanisms intended to promote equality between territorial communities shall be provided for by statute.

Article 72-3

The Republic shall recognise the overseas populations within the French people in a common ideal of liberty, equality and fraternity.

Guadeloupe, Guyane, Martinique, La Réunion, Mayotte, Saint-Barthélemy, Saint-Martin, Saint-Pierre-et-Miquelon, the Wallis and Futuna Islands and French Polynesia shall be governed by article 73 as regards overseas departments and regions and for the territorial communities set up under the final paragraph of article 73, and by article 74 for the other communities.

The status of New Caledonia shall be governed by title XIII.

The legislative system and special organisation of the French Southern and Antarctic Territories and Clipperton shall be determined by statute.

Article 72-4

No change of status as provided for by articles 73 and 74 with respect to the whole or part of any one of the communities to which the second paragraph of article 72-3 applies, shall take place without the prior consent of voters in the relevant community or part of a community being sought in the manner provided for by the paragraph below. Such change of status shall be made by an Institutional Act.

The President of the Republic may, on a recommendation from the Government when Parliament is in session or on a joint motion of the two Houses, published in either case in the *Journal officiel*, decide to consult voters in an overseas territorial community on a question relating to its organisation, its powers or its legislative system. Where the referendum concerns a change of status as provided for by the foregoing paragraph and is held in response to a recommendation by the Government, the Government shall make a statement before each House which shall be followed by debate.

Article 73

In the overseas departments and regions, statutes and regulations shall be automatically applicable. They may be adapted in the light of the specific characteristics and constraints of such communities.

Those adaptations may be decided on by the communities in areas in which their powers are exercised if the relevant communities have been empowered to that end by statute or by regulation, whichever is the case.

By way of derogation from the first paragraph hereof and in order to take account of their specific features, communities to which this article applies may be empowered by statute or by regulation, whichever is the case, to determine themselves the rules applicable in their territory in a limited number of matters that fall to be determined by statute or by regulation.

These rules may not concern nationality, civic rights, the guarantees of civil liberties, the status and capacity of persons, the organisation of justice, criminal law, criminal procedure, foreign policy, defence, public security and public order, currency, credit and exchange, or electoral law. This list may be clarified and amplified by an Institutional Act.

The two foregoing paragraphs shall not apply in the department and region of La Réunion.

The powers to be conferred pursuant to the second and third paragraphs hereof shall be determined at the request of the relevant territorial community in the conditions and subject to the reservations provided for by an Institutional Act. They may not be

conferred where the essential conditions for the exercise of civil liberties or of a right guaranteed by the Constitution are affected.

The setting up by statute of a territorial community to replace an overseas department and region or a single Deliberative Assembly for the two communities shall not be carried out unless the consent of the voters registered there has first been sought as provided by the second paragraph of article 72-4.

Article 74

The Overseas territorial communities to which this article applies shall have a status reflecting their respective local interests within the Republic.

This status shall be determined by an Institutional Act, passed after consultation of the Deliberative Assembly, which shall specify:

– the conditions in which statutes and regulations shall apply there;

– the powers of the territorial community; subject to those already exercised by said community the transfer of central government powers may not involve any of the matters listed in paragraph four of article 73, as specified and completed, if need be, by an Institutional Act;

– the rules governing the organisation and operation of the institutions of the territorial community and the electoral system for its Deliberative Assembly;

– the conditions in which its institutions are consulted on Government or Private Members' Bills and draft Ordinances or draft Decrees containing provisions relating specifically to the community and to the ratification or approval of international undertakings entered into in matters within its powers.

The Institutional Act may also, for such territorial communities as are self-governing, determine the conditions in which:

– the *Conseil d'État* shall exercise specific judicial review of certain categories of decisions taken by the Deliberative Assembly in matters which are within the powers vested in it by statute;

– the Deliberative Assembly may amend a statute promulgated after the coming into effect of the new status of said territorial community where the Constitutional Council, acting in particular on a referral from the authorities of the territorial community, has found that statute law has intervened in a field within the powers of said Assembly;

– measures justified by local needs may be taken by the territorial community in favour of its population as regards access to employment, the right of establishment for the exercise of a professional activity or the protection of land;

– the community may, subject to review by the central government, participate in the exercise of the powers vested in it while showing due respect for the guaranties given throughout national territory for the exercising of civil liberties.

The other rules governing the specific organisation of the territorial communities to which this article applies shall be determined and amended by statute after consultation with their Deliberative Assembly.

Article 74-1

In the Overseas territorial communities referred to by Article 74 and in New Caledonia, the Government may, in matters which remain within the power of the State, extend by Ordinance, with any necessary adaptations, the statutory provisions applying in mainland France, or adapt the statutory provisions applying, to the specific organization of the community in question, provided statute law has not expressly excluded the use of this procedure for the provisions involved.

Such Ordinances shall be issued in the Council of Ministers after receiving the opinion of the relevant Deliberative Assemblies and the *Conseil d'État*. They shall come into force upon publication. They shall lapse if they are not ratified by Parliament within eighteen months of their publication.

Article 75

Citizens of the Republic who do not have ordinary civil status, the sole status referred to in Article 34, shall retain their personal status until such time as they have renounced the same.

Article 75-1

Regional languages are part of France's heritage.

TITLE XIII

TRANSITIONAL PROVISIONS PERTAINING TO NEW CALEDONIA

Article 76

The population of New Caledonia is called upon to vote by 31 December, 1998 on the provisions of the agreement signed at Nouméa on 5 May, 1998, published in the *Journal officiel* of the French Republic on 27 May, 1998.

Persons satisfying the requirements laid down in article 2 of Act No. 88-1028 of 9 November, 1988 shall be eligible to take part in the vote.

The measures required to organize the voting process shall be taken by decree adopted after consultation with the *Conseil d'État* and discussion in the Council of Ministers.

Article 77

After approval of the agreement by the vote provided for in article 76, the Institutional Act passed after consultation with the Deliberative Assembly of New Caledonia shall determine, in order to ensure the development of New Caledonia in

accordance with the guidelines set out in that agreement and in the manner required for its implementation:

– those of the State's powers which are to be definitively transferred to the institutions of New Caledonia, the applicable time frame and the manner in which said transfer shall be proceeded with, together with the apportionment of expenditure arising in connection therewith;

– the rules governing the organization and operation of the institutions of New Caledonia, in particular the circumstances in which certain kinds of decisions taken by the Deliberative Assembly of New Caledonia may be referred to the Constitutional Council for review before publication;

– the rules concerning citizenship, the electoral system, employment, and personal status as laid down by customary law;

– the conditions and the time limits within which the population concerned in New Caledonia is to vote on the attainment of full sovereignty.

Any other measures required to give effect to the agreement referred to in article 76 shall be determined by statute.

For the purpose of defining the body of electors called upon to elect members of the Deliberative Assemblies of New Caledonia and the provinces, the list referred to in the Agreement mentioned in Article 76 hereof and Sections 188 and 189 of Institutional Act n° 99-209 of March 19, 1999 pertaining to New Caledonia is the list drawn up for the ballot provided for in Article 76 hereinabove which includes those persons not eligible to vote.

Articles 78 to 86 repealed

TITLE XIV

ON THE FRENCH-SPEAKING WORLD AND ON ASSOCIATION AGREEMENTS

Article 87

The Republic shall participate in the development of solidarity and cooperation between States and peoples having the French language in common.

Article 88

The Republic may enter into agreements with States which wish to associate with it in order to develop their civilizations.

TITLE XV

ON THE EUROPEAN UNION

Article 88-1

The Republic shall participate in the European Union constituted by States which have freely chosen to exercise some of their powers in common by virtue of the Treaty on European Union and of the Treaty on the Functioning of the European Union, as they result from the treaty signed in Lisbon on 13 December, 2007.

Article 88-2

Statutes shall determine the rules relating to the European arrest warrant pursuant to acts adopted by the institutions on the European Union.

Article 88-3

Subject to reciprocity and in accordance with the terms of the Treaty on European Union signed on 7 February 1992, the right to vote and stand as a candidate in municipal elections shall be granted only to citizens of the Union residing in France. Such citizens shall neither hold the office of Mayor or Deputy Mayor nor participate in the designation of Senate electors or in the election of Senators. An Institutional Act passed in identical terms by the two Houses shall determine the manner of implementation of this article.

Article 88-4

The government shall lay before the National Assembly and the Senate drafts of European legislative acts as well as other drafts of or proposals for acts of the European Union as soon as they have been transmitted to the Council of the European Union.

In the manner laid down by the Rules of Procedure of each House, European resolutions may be passed, even if Parliament is not in session, on the drafts or proposals referred to in the preceding paragraph, as well as on any document issuing from a European Union Institution.

A committee in charge of European affairs shall be set up in each of the Houses of Parliament.

Article 88-5

Any Government Bill authorizing the ratification of a treaty pertaining to the accession of a state to the European Union shall be submitted to referendum by the President of the Republic.

Notwithstanding the foregoing, by passing a motion adopted in identical terms in each House by a three-fifths majority, Parliament may authorize the passing of the Bill according to the procedure provided for in paragraph three of article 89.

Article 88-6

The National Assembly or the Senate may issue a reasoned opinion as to the conformity of a draft proposal for a European Act with the principle of subsidiarity. Said opinion shall be addressed by the President of the House involved to the Presidents of the European Parliament, the Council of the European Union and the European Commission. The Government shall be informed of said opinion.

Each House may institute proceedings before the Court of Justice of the European Union against a European Act for non-compliance with the principle of subsidiarity. Such proceedings shall be referred to the Court of Justice of the European Union by the Government.

For the purpose of the foregoing, resolutions may be passed, even if Parliament is not in session, in the manner set down by the Rules of Procedure of each House for the tabling and discussion thereof. Such proceedings shall be obligatory upon the request of sixty Members of the National Assembly or sixty Senators.

Article 88-7

Parliament may, by the passing of a motion in identical terms by the National Assembly and the Senate, oppose any modification of the rules governing the passing of Acts of the European Union in cases provided for under the simplified revision procedure for treaties or under judicial cooperation on civil matters, as set forth in the Treaty on European Union and the Treaty on the Functioning of the European Union, as they result from the treaty signed in Lisbon on December 13, 2007.

TITLE XVI

ON AMENDMENTS TO THE CONSTITUTION

Article 89

The President of the Republic, on the recommendation of the Prime Minister, and Members of Parliament alike shall have the right to initiate amendments to the Constitution.

A Government or a Private Member’s Bill to amend the Constitution must be considered within the time limits set down in the third paragraph of article 42 and be passed by the two Houses in identical terms. The amendment shall take effect after approval by referendum.

However, a Government Bill to amend the Constitution shall not be submitted to referendum where the President of the Republic decides to submit it to Parliament convened in Congress; the Government Bill to amend the Constitution shall then be approved only if it is passed by a three-fifths majority of the votes cast. The Bureau of the Congress shall be that of the National Assembly.

No amendment procedure shall be commenced or continued where the integrity of national territory is placed in jeopardy.

The republican form of government shall not be the object of any amendment.

TITLE XVII

(Repealed)

Notes